Supreme Court, U.S.
FILED

931254 DEC 16 1993

OFFICE OF THE CLERK

NO. 93-

*IN THE SUPREME COURT*
*OF THE UNITED STATES*

*OCTOBER TERM, 1993*

---

*FEDERACION DE MAESTROS*
*DE PUERTO RICO*
*PETITIONER*

*V.*

*LABOR RELATIONS BOARD*
*RESPONDENT*

# *PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO*

---

## *PETITION FOR A WRIT OF CERTIORARI*

---

*ALDARONDO-GIRALD LAW OFFICES*
*LE MANS CONDOMINIUM, OFFICE #803*
*MUÑOZ RIVERA AVENUE #602*
*HATO REY PR 00918*
*(809) 766-2876*
*ATTORNEY FOR PETITIONER*

## QUESTIONS PRESENTED FOR REVIEW

a) Whether the Labor Relations Board can certify a union, Federación Puertorriqueña, composed in its entirety by supervisors, management, decision and policy making employees in contravention to the federal labor policy and sections 2(2), 2(3) and 14(a) of the National Labor Relations Act.

b) Whether the Superior Court of Puerto Rico, San Juan Part, and the Labor Relations Board can order Federación de Maestros to negotiate and bargain collectively with Federación Puertorriqueña, eventhough the later is a union created by a private agreement, composed in its entirety by policy and decision making personnel and which also waived expressly its right to negotiate and bargain collectively with Federacion de Maestros.

c) Whether the Labor Relations Board can forbid Federación de Maestros from presenting evidence in order to prove the managerial, supervisory, decision and policy making character of the employees in the claimed bargaining unit.

**TABLE OF CONTENT**

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW.....1

OPINIONS BELOW.....7, 8

QUESTIONS PRESENTED FOR REVIEW....2

STATEMENT OF JURISDICTION.....8

CONSTITUTIONAL PROVISION, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED.....8-12

STATEMENT OF THE CASE.....12-17

REASONS FOR GRANTING THE WRIT....17, 18

CONCLUSION.....39

**TABLE OF AUTHORITIES**

Beasley v. Food Fair of North Carolina, 416 U.S. 653 (1974).

Board of Regents v. Roth, 408 U.S. 564 (1972).

General Dynamics Corp., 213 N.L.R.B. 841 (1974).

Leedan v. Kyne, 358 U.S. 184 (1984).

Mathews v. Elridge, 424 U.S. 319 (1976).

Meyer v. Nebraska, 262 U.S. 390 (1922).

N.L.R.B. v. Bell Aerospace, 416 U.S. 267 (1974).

N.L.R.B. v. Hendricks County, 454 U.S. 170 (1981).

N.L.R.B. v. Talladega Cotton, 213 F.2d 209 (1954).

Sutter Community Hospital of Sacramento, 227 N.L.R.B. 181 (1976).

Washington Electric Corp. v. N.L.R.B., 398 F.2d 669 (1968).

Yeshiva University v. N.L.R.B., 444 U.S. (1980).

**STATUTES**

FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.....8, 9

NATIONAL LABOR RELATIONS ACT, 29 U.S.C. SEC. 152.....9, 19

NATIONAL LABOR RELATIONS ACT, 29 U.S.C. SEC. 152(3).....9, 19, 24, 30, 35, 38.

NATIONAL LABOR RELATIONS ACT, 29 U.S.C. SEC. 152(11).....10, 13, 19, 25, 30, 35, 38.

NATIONAL LABOR RELATIONS ACT, 29 U.S.C. SEC. 157.....10, 11, 35.

NATIONAL LABOR RELATIONS ACT, 29 U.S.C. SEC. 158.....11.

NATIONAL LABOR RELATIONS ACT, 29 U.S.C. SEC. 164.....11, 12, 27, 35, 38.

3 L.P.R.A. SEC. 702.....12.

**MISCELLANEOUS**

28 U.S.C. SEC. 1258.....7

## PETITION FOR WRIT OF CERTIORARI

Federación de Maestros de Puerto Rico, from hereinafter Federación de Maestros, respectfully petitions for a writ of certiorari to review a Resolution of the Supreme Court of the Commonwealth of Puerto Rico in the present case.

## OPINIONS BELOW

The Decision and Order of the Labor Relations Board, D-92-1201 issued on October 31st, 1991, case number CA 89-57, not published. The Decision and Order of the Labor Relations Board, D 92-1201 issued on March 5th, 1992, case number CA 89-57, not published. The judgment of the Superior Court of Puerto Rico, San Juan Part, case number KAC 92-0937 (901) issued on December 2nd, 1992, not published. The judgment of the Court of Appeals (Puerto Rico) issued on May 5th, 1993, case number SNCE #93-0034, not published. The Resolution of the Supreme Court of the Commonwealth of Puerto Rico issued on July 2nd, 1993, case number CE-93192, not published. The Resolution of the Supreme Court of the Commonwealth of Puerto Rico issued on August 20th, 1993, case number CE 93-192, not

published. The Resolution of the Supreme Court of the Commonwealth of Puerto Rico, case number CE 93-192, issued on September 17th, 1993, not published.

## JURISDICTION

The Resolution of the Supreme Court for the Commonwealth of Puerto Rico for the writ of certiorari filed by Petitioners was entered on July 2nd, 1993. Petitioners filed a timely petition for reconsideration and second petition for reconsideration, which were denied on September 17th, 1993. Copies of the resolutions denying the petitions are attached as exhibits I, II and III accordingly. The jurisdiction of this court is invoked under 28 U.S.C. sec. 1258.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INCLUDED

1. Fourteenth Amendment of the Constitution of the United States of America, provides in relevant parts, that:

"... nor shall any state deprive any person of life, liberty or property, without due process of law..."

2. Section (2) of the National Labor Relations Act, 29 U.S.C. sec. 152, which provides, that:

"... the term "employer" includes any person acting as an agent of an employer, directly or indirectly..."

3. Section 2(3) of the National Labor Relations Act, 29 U.S.C. sec. 152(3), provides, in pertinent parts, that:

"The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include... any individual employed as a supervisor..."

4. Section 2(11) of the National Labor Relations Act, 29 U.S.C. sec. 152(11) provides that:

> "The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend such action if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

5. Section 7 of the National Labor Relations Act, 29 U.S.C. sec. 157 provides, in pertinent part, that:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other

concerted activities for the propose of collective bargaining or other mutual and or protection..."

6. Section 8 of the National Labor Relations Act, 29 U.S.C. sec. 158 provides that:

"(a) It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7; (2) to dominate or interfere with the formation or administration of any Labor organization... (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

7. Section 14(a) of the National Labor Relations Act, 29 U.S.C. sec. 164 provides, in relevant part, that:

"Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act shall be compelled to deem individuals defined herein as supervisors

as employees for the purpose of any law, either national or local, relating to collective bargaining..."

**STATEMENT OF THE CASE**

Federación de Maestros, is a bonafide organization created under the Law Number 134 of July 19, 1960, 3 L.P.R.A.\sec. 702. Petitioner is recognized by the Department of Education and the Department of Labor as the representative for some twelve thousand classroom teachers of the educational system. The petitioner has, throughout the island of Puerto Rico, ten Regional Representatives. The functions and duties of each of the representatives are clearly established in Federación de Maestros rules, regulations and job applications wich are included as exhibits V, VI, VII and VIII. In synthesis these are: (a) execute the Federación de Maestros organization's policy; (b) file and discuss complaints and other problems with the School Director or the Department of Education Representative; (c) keep in close communication with the director of the Department of Organization and Development of Federación de

Maestros; (f) participate in the meetings of the leader corps of Federación de Maestros; (g) they also belong to the Executive Committee, the Board of Directors, the Delegates Assembly and the General Assembly, which are the bodies that direct and control all the internal, as well as the external, affairs of Federación de Maestros. See exhibits IV, V, VI, VII and VIII. From all of the above it is clear that the Regional Representatives are supervisors, or decision and policy making employees, therefore excluded under section 2(11) from the protection afforded by the National Labor Relations Act.

On July 1st, 1988 the Regional Representatives, also known as the Organizers, filed a petition to organize themselves in a union before the Labor Relations Board under the name of Federación Puertorriqueña de Trabajadores.

Petitioner, Federación de Maestros, informed the Labor Relations Board their refusal to recognize Federación Puertorriqueña as the official bargaining representative of the Regional Representatives because of the policy

and decision making functions of the members of the later in the internal as well as the external affairs of Federación de Maestros.

Regarding the July 1st, 1988, petition, the Labor Relations Board ordered an election which took place on October 13th, 1988. Federación Puertorriqueña won the election, nevertheless Federación de Maestros did not recognized it as a valid and legitimate bargaining representative since their members were supervisors, management, decision and policy making employees. On March 8th, 1989, a hearing was scheduled by the Labor Relations Board. The purpose of the hearing was to discuss the refusal of Federación de Maestros to negotiate and recognize Federación Puertorriqueña. However, at the beginning of the hearing Federación de Maestros and Federación Puertorriqueña informed the Board that they reached an agreement in which petitioner recognized Federación Puertorriqueña as the exclusive bargaining representatives for the Regional Representatives. In response the union agreed not to exercise its right to bargain

collectively with the employer, Federacion de Maestros. See exhibit IX.

On May 28th, 1989, the Board relying upon the parties agreement issued a Decision and Certification Order by which it recognized Federación Puertorriqueña as the exclusive bargaining representative of the Regional Representatives. It also closed the case regarding the representation issue. Exhibit X.

Later on, in contravention with the agreement, Federación Puertorriqueña required Federación de Maestros to subscribe some stipulations that were the equivalent to the negotiation of mandatory subjects of a collective bargaining agreement. Federación de Maestros refused, due to the agreement that existed between the parties. Federación Puertorriqueña then filed a charge before the Labor Relations Board since Federación de Maestros had refused to negotiate. On October 31st, 1991, the Labor Relations Board entered a Decision and Order in which it concluded that due to the agreement, Federación de Maestros had the duty to bargain collectively with Federación Puertorriqueña. See exhibit XI.

On November 20th, 1991, petitioner, Federación de Maestros, filed a Motion for Reconsideration before the Board in which it reiterated that the members of Federación Puertorriqueña were intimately involved with the management, decision and policy making of Federación de Maestros, therefore the Labor Relations Board cannot compelled petitioner to negotiate and bargain with Federacion Puertorriqueña.

On March 5th, 1992 the Board ordered Federación de Maestros to negotiate a collective bargaining agreement with Federación Puertorriqueña. See exhibit XII. The Board filed before the Superior Court of Puerto Rico, San Juan Part, a petition to enforce the order of May 5th, 1992. The Superior Court of Puerto Rico granted the petition on December 2nd, 1992. See exhibit XIII. On December 23rd, 1992, petitioner filed a Motion for Reconsideration which was denied by the Superior Court of Puerto Rico.

Petitioner filed then a Certiorari before the Court of Appeals of Puerto Rico by which it sought to review the decisions of the Labor Relations Board and the Superior Court of Puerto

Rico, San Juan Part. The Court of Appeals denied petition on grounds that the agreement between the parties was valid. See exhibit XIV.

On June 3rd, 1993, petitioner filed a Certiorari before the Supreme Court of the Commonwealth of Puerto Rico which sought to review the decision of the Court of Appeals. See exhibit XV. The Court did not grant the Certiorari, the resolution was issued on July 2nd, 1993. See exhibit I. A First Motion for Reconsideration was filed before the Supreme Court of the Commonwealth of Puerto Rico which was denied. See exhibit II and XVI. A Second Motion for Reconsideration was filed before the Supreme Court of the Commonwealth of Puerto Rico and it was also denied on September 17th, 1993. See exhibit III and XVII.

**REASONS FOR GRANTING THIS PETITION**

Petitioner cites the following reasons for granting this petition: a) The Supreme Court of the Commonwealth of Puerto Rico erred in validating an order which certified a union created by a private agreement composed in its entirety by management, decision and policy

making employees, in contravention to the National Labor Relations Act, the decisions of the National Labor Relations Board, and the general doctrine adopted by the Supreme Court of the United States; See exhibits IV, V, VI, VII, VIII, XIX, XX, XXI, XXII and XXIII. b) the Supreme Court of the Commonwealth of Puerto Rico erred in validating an order which deprived petitioner's right to a due process of law since it prohibited Federación de Maestros the from introducing evidence during the hearing before the board in order to prove the managerial, policy and decision making character of the employees that were members of Federación Puertorriqueña. See exhibit XVIII.

**SUMMARY OF ARGUMENT**

Our contention is that the Labor Relations Board decision was erroneous when it certified a union composed of management, policy and decision making employees, in contravention to the National Labor Relations Act, the decision of the National Labor Relations Board and the Supreme Court of the United States.

The purpose of the National Labor Relations

Act, as amended, 29 U.S.C., sec. 152 was to encourage and promote the practice and procedure of collective bargaining by protecting the right of the employees to full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

The National Labor Relation Act, as amended, supra, defines the term employee in section 2(3) in a manner which expressly excludes the management, policy and decision-making employees from the collective bargaining process, as has been interpreted by this Supreme Court. The employer is not obliged to bargain collectively with a union formed by policy and decision making employees. The positions named as Regional Representatives clearly fall in the definition of a supervisor or management and decision making employee as those terms are defined in section 2(11) of the National Labor Relations Act, as amended, 29 U.S.C. sec. 152. The functions that performed the Regional

Representatives are clearly established in Federación de Maestros rules, regulations job descriptions and job eveluations, which are included as exhibits IV, V, VI, VII, and VIII in this writ. Their functions, among others, are; 1) the execution of the organization policy of Federación de Maestros; 2) filing and discussing complaints; 3) keep in close and constant communication with the director of the Department of Organization and Development of Federación de Maestros. They are also members of the Executive Committee, the Board of Directors, the Delegates Assembly and the General Assembly, which are the bodies that direct and control the internal, as well as the external, policy making functions of Federación de Maestros. They also have the right to vote in the assemblies, they even have the right to impugn and even reverse Federación de Maestros president's decisions.

From all of the above, it can be easily established that the Regional Representatives or Organizers cannot organize themselves in a union nor bargain collectively with their employer, Federación de Maestros. For the same reason the

refusal of petitioner to bargain collectivelly with Federacion Puertorriqueña does not constitute an unfair labor practice.

The Labor Relations Board's decision is erroneous where it validated an order which deprived Federación de Maestros of a due process of law since it prohibited petitioner from presenting evidence in order to prove the management and decision making functions of the Regional Representatives. In the hearing before the Labor Relations Board, it was expressly mentioned in the report of the Hearing Examiner, that petitioner in various occasions tried to present evidence related to the impugnation of the certification of the appropriate bargaining unit but it was not allowed. See exhibit XVIII.

The Constitution of the United States dictates that no person shall be deprived of life, liberty or property without a due process of law. The presentation of evidence, as well as to refute that presented against, is part of the due process of law and one of the fundamental principles of the american justice system which no court, agency or forum can deprive a litigant

from. **ARGUMENT**

**I. THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO ERRED IN VALIDATING AN ORDER OF THE LABOR RELATIONS BOARD WHICH CERTIFIED A UNION COMPOSED IN IT'S ENTIRETY BY MANAGERIAL, SUPERVISORS, POLICY AND DECISION MAKING EMPLOYEES.**

According to the National Labor Relations Act, the decisions of the United States Supreme Court and the Federal Labor Relations Board, the employees that are intimately involved in management, the supervisors, the policy and decision making employees are excluded from the protection afforded by the Federal Labor Relations Act. In the present case the Regional Repre-sentatives are; (1) stock holders in the corporation known as Federación de Maestros de Puerto Rico; (2) they vote in the elections; (3) they can run for elective positions; (4) they have the right to reverse or refute through general assemblies or meetings the decisions of Federación de Maestros president or administrator; (5) they file and discuss complaints and other problems with the school

director or the Department of Education Representative; (6) they organize and recruit teachers in the schools; (7) as representatives of their Region they are members of the Executive Committee, the Board of Directors, the Delegate Assembly and the General Assembly which are the bodies that direct all the internal, as well as the external, affairs of Federación de Maestros. See exhibits IV, V, VI, VII and VIII.

It must be point out that the Executive Committee is the supreme authority of Federación de Maestros when the Board of Directors is not in session, it is also the body in charge of making all the policy decisions relating to salary and all the other benefits of Federacion de Maestros employees. The Regional Representatives also control petitioner's daily operations and pass judgment on the collective bargaining agreement. See copy of the record of the proceedings of said committe dated, January 29th, 1989, December 29th, 1989, February 3rd, 1990, and December 3rd, 1990, exhibits XIX, XX, XXI, XXII and XXIII. In the present case the Regional Repre-sentatives must be excluded from

being part or creating an appropriate bargaining unit because of their involvement, among other things, in the management, decision and policy making process, both internal as well as external of Federación de Maestros.

The National Labor Relations Act defines the term employee as: "The term employee shall include any employee...but shall not include... any individual employed as supervisor". Federal Labor Relations Act, sec. 2(3), 29 U.S.C. sec. 152(3). The National Labor Relations Act expressly excludes the executives as well as the supervisors from its protection, since they are not included in the definition of term employee nor in section 7 of the Act.

The National Labor Relations Act defines the term supervisor as: "...any individual having authority, in the interest of the employer, to hire transfer, suspend, lay off, recall, promote discharge, assign, reward, or discipline other employees, or responsible to direct them or to adjust their grievances, of effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not

of a merely routine or clerical nature, but requires the use of independent judgment. "National Labor Relations Act, sec. 2(11), 29 U.S.C. 152(11). The Labor Relations Board cannot certify a union composed of supervisors, policy and decision making employees. Being the Regional Representatives supervisors, or policy and decision making employees, the Labor Relations Board did not have jurisdiction to issue an order requiring petitioner to recognize and bargain collectively with Federación Puertorriqueña. See: Leedom v. Kyne, 358 U.S. 184 (1984). This Court has ruled that a group of supervisors, management and decision making employees cannot invoke the protection of the National Labor Relations Act nor file a charge for illicit labor practice for refusal of the employer to bargain, since that right is for employees only, not for supervisors. N.L.R.B. vs. Talladega Cotton, 213, F. 2d 209, 217 (1954). There are other groups, with similar and/or identical functions to those of the Regional Representatives, that are not covered by the Federal Labor Relations Act nor have the

right to bargain collectively with an employer.

According to the Supreme Court of the United States, managerial employees are not protected by the National Labor Relations Act. These types of employees are those whose interests are intimately involved with management or that formulate, determine or execute the management policy. See: N.L.R.B. v. Bell Aerospace, 416 U.S. 267, 289 (1974); Yeshiva Univ. v. N.L.R.B., 444 U.S. 672, 683 (1980).

The Supreme Court of the U.S. has also defined managerial employees in the often quoted opinion of Yeshiva, supra, as: "Managerial employees must exercise discretion with or even independently of established employer policy and must aligned with management... normally an employee may be excused as managerial only if he represents management interest by taking or recommending discretionary actions that effectively control or implement employer policy". Yeshiva University v. N.L.R.B., supra, at page 683; General Dynamics Corp., 213 N.L.R.B. 841, 857-858 (1974).

Another category of employees exclude from the

National Labor Relations Act are the confidential employees. Under the term confidential employee this Court has excluded those employees that have some connection with the employer labor policy or those who assist, in a confidential capacity, the persons who formulate, determine and execute the employer management policy. Also, those that because of their job have access to confidential information about the collective bargaining process between the union and the employer. N.L.R.B. v. Hendricks County, 454 U.S. 170, 189 (1981); N.L.R.B. v. Bell Aerospace, supra, at pages 283, 284. The National Labor Relations Act in section 14(a), 29 U.S.C., sec. 164 dictates: "Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this act shall be compelled to deem individuals herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining".

The aforementioned section has been

interpreted by the different Federal Circuit Courts of Appeals and the United States Supreme Court as to mean that no employer shall be compelled to treat supervisors, managerial, decision and policy making personnel as employees for the purpose of the collective bargaining process.

The Supreme Court of the U.S. has consistently held that decision and policy making employees are exempted from the protection of the National Labor Relations Act, therefore the Labor Relations Board nor the National Labor Relations Board can exercise their jurisdiction over any labor dispute between these employees and the employer. The Federal law preempts this area of law and any state or local law in contrary is invalid. The Supreme Court of the U.S. in the often quoted opinion of Beasley v. Food Fair, Inc. 416 U.S. 653, 657-661 (1974), stated, regarding a union composed of supervisory employees: "But the second clause is a broad command that no employer shall be compelled to treat supervisors as employees for the purpose of any law either national or local relating to

collective bargaining. Consistently with this broader command, and Hanna's further statement that congress propelling intention...[was]... to relieve employers from any compulsion under the Act and understate law to countenance or bargain with any union of supervisory employees...

To permit a state law to deprive an employer of his right to discharge his supervisor for membership in a union would completely frustrate the congressional determination to leave this weapon of self help to the employer...

There were differences in the specific provisions addressed to supervisory employees, but no difference in objective. Employers were not to be obliged to recognize and bargain with unions including or composed of supervisors, because supervisors were management obliged to be loyal to their employers interests and their identity with the interests of rank and file employees might impair that loyalty and threaten realization of the basic ends of Federal Labor legislation. Thus the House Report stated:

Management like labor must have faithful agents... If we are to produce goods compe-

titively, and in such large quantities that many can by them at low cost, then just as there are people on labor's side to say what workers want and have a right to expect, there must be in management and loyal to it persons not subject to influence or control of unions, not only to assign people to their work, to see that they keep at their work and do it well, to correct them when they are at fault, and to settle their complaints and grievances, but to determine how much work employees should do, what pay they should receive for it, and to carry on the whole of labor relations". H.R. Rep. No. 245, 80th Cong. 1st. Sess. 16 (1947). The same theme that unionizing supervisors threatened realization of the basic objectives of the Act to increase the out put of goods in commerce by promoting labor peace is repeated in the senate Report...

This history compels the conclusion that congress dominant purpose in enacting section 2(3), 2(11) and 14(a) was to redress a perceived imbalance in labor management relationships that was found to arise from putting supervisors in the position of serving two masters with opposed

interests. See generally N.L.R.B. v. Bell Aerospace Co., 416 U.S. 267, 85 L.R.R.M. 2945 (1974) we conclude therefore that the second clause & 14(a) relieving the employer of obligations under "any law, either National or local, relating to collective bargaining" applies to any law that requires an employer "to accord to the front line of management the anomalous status of employees".S Rep No 105, 5."

The Supreme Court of the U.S. in the aforementioned opinion of Yeshiva, supra, considered a petition for the certification of a union composed in its entirety by university professors, the court stated: "But professionals, like other employees, may be exempted from coverage under the Act's exclusion for supervisors who use independent judgment in overseeing other employees in the interest of the employer, or under the judicially implied exclusion for managerial employees who are involved in developing and enforcing employer policy. Both exemptions grow out of the same concern: That an employer is entitled to the undivided loyalty of its representatives.

Beasley v. Food Fair of North Carolina, supra, at pages 661-662; N.L.R.B. v. Bell Aerospace, Co., supra, at pages 281,282.

In synthesis the Supreme Court concluded that the professors, due to their participation and involvement in the policy and decision making process of the employer and/or university had to be considered as managerial employees and therefore exempted from the protection of the National Labor Relations Act. The Board could not exercise its jurisdiction over them, neither to certificate the professors as a union nor to order an employer to bargain and negotiate collectively with them.

In the present case the Regional Representatives have direct access to confidential information regarding the collective bargaining process, they have the right to approve or disapprove the collective bargaining agreement as well as the decisions taken by the president of Federación de Maestros, they file and discuss grievances, they participate in the recruitment and discharge of employees, they have a voice and vote in the Executive Committee, the Board

of Directors, and the Delegates Assembly, which are the bodies that direct and control all affairs of Federacion de Maestros. In synthesis they play an active and decisive role in both the internal and external policy and decision making process of Federación de Maestros. See exhibits IV, V, VI, VII, VIII, XIX, XX, XXI, XXII and XXIII.

From all the above it is clear that the Supreme Court of the Commonwealth of Puerto Rico erred in validating the Order of the Labor Relations Board which certified Federación Puertorriqueña as the exclusive bargaining representative of the policy and decision making personnel of Federación de Maestros.

**II. SUPPREME COURT OF THE COMMONWEALTH OF PUERTO RICO ERRED WHEN IT VALIDATED AN ORDER THAT DEPRIVED FEDERACION DE MAESTROS OF ITS CONSTITUTIONAL RIGHT TO A DUE PROCESS OF LAW, SINCE IT FORBID FEDERACION DE MAESTROS FROM PRESENTING EVIDENCE REGARDING THE MANAGEMENT AND DECISION MAKING CHARACTER OF THE EMPLOYEES THAT WERE MEMBERS OF THE UNION.**

The procedural due process requirements apply

only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of life, liberty and property. To determine whether due process requirements apply, we must first look not to the weight, but to the nature of the interest at stake. We must look to see if the interest is within the Fourteenth Amendment's protection of life, liberty and property.

The United States Supreme Court defined property, in the often quoted opinion of Board of Regents v. Roth, 408 U.S. 564, 577 (1972). "...property interests, of course, are not created by the constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from and independent source such as state law rules or understanding that secure certain benefits and that support claims of entitlement to those benefits..." In the opinion of Meyer vs. Nebraska, 262 U.S. 390, 399 (1922). the Supreme Court of the United States defined liberty as: "...while this court has not attempted to define with exactness the liberty... guaranteed by the Fourteenth Amendment, the term has received much

consideration and some of the included things have been definitely stated, without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized ...as essential to the orderly pursuit of happiness by free men..." In the present case Federación de Maestros has a property interest conferred by sections 2(3), 2(11), 7 and 14(a) of the National Labor Relations Act, which consists of the right to refuse to negotiate and bargain collectively with a union composed in its totality by management, supervisors, policy and decision making employees. The aforementioned sections of the Act dictate that an employer does not have a duty to negotiate and bargain collectively with a union composed by management and decision making employees. Federación de Maestros also has a liberty interest which

consist of the right to refuse to negotiate and bargain collectively with a union composed of supervisors and key personnel. The Act does not impose on petitioner a duty to negotiate with Federación Puertorriqueña, therefore any order requiring petitioner to bargain collectively with Federación Puertorriqueña de Trabajadores infringes Federación de Maestros liberty interests as defined by the United States Supreme Court in the opinion of Meyer v. Nebraska, supra, at page 399.

Once it is concluded that petitioner has a property as well as a liberty interest, the courts must employ the balancing analysis set forth in the opinion of Mathews v. Elridge, 424 U.S. 319, 335 (1976), in order to determine what process is due. The nature of the interest affected in the present case by the official action, and the procedure used which did not allow the intro-duction of evidence in the hearing, therefore increasing the risk tremendously of an erroneous decision, lead us to conclude that the process afforded to Federación de Maestros at the hearing before the

Labor Relations Board was not due. We must also point out that the cost of additional or substitute procedural safeguards was minimal and their value and contribution to the process invaluable. In the present case petitioner was deprived of its liberty and property interests without a due process of law. This, due to the fact that during the hearing at the Labor Relations Board the Hearing Examiner did not gave Federación de Maestros an opportunity to present evidence in order to prove that the Regional Representatives were supervisors, policy and decision making employees. From the Hearing Examiner's record clearly emerge at page eleven, see exhibit XVIII, that on numerous occasions during the hearing petitioner tried to present evidence in order to prove that the bargaining unit was not appropriate due to the fact that its members were supervisory, management and key personnel, but the Hearing Examiner did not allow them, making then, the Labor Relations Board, a determination about the appropriate bargaining unit without any evidence on the record.

The aforementioned actions by the Hearing Examiner and their subsequent convalidation by the Supreme Court of the Commonwealth of Puerto Rico deprived petitioner of their liberty and property interests without a due process of law, since it obliged Federación de Maestros to bargain collectively with a union formed by supervisors, management and decision making employees in contravention to sections 2(3), 2(11), 7 and 14(a) of the National Labor Relations Act, as amended, supra and the general doctrine enunciated by the National Labor Relations Board and the Supreme Court of the United States.

From the sources and arguments stated above it is clear that the Labor Relations Board cannot order, due to lack of jurisdiction, Federación de Maestros to negotiate and bargain collectively with Federación Puertorriqueña because the later is a union composed of management, supervisory, decision and policy making employees. The National Labor Relations Act, which preempts the field, in its pertinent sections more specifically section 14(a) does

not confer the Board jurisdiction to order an employer to bargain collectively with a union composed of managerial and supervisory personnel. It is also clear that petitioner was deprived of his property and liberty interests without a due process of law in violation of the Four-teenth Amendment of the Constitution of the United States due to the fact that the Official Examiner during the hearing before the Labor Relations Board did not allow Federación de Maestros the presentation of evidence, issuing then a determination about the appropriateness of the bargaining unit, in the present case Federación Puertorriqueña, without any evidence on the record. **CONCLUSION**

The Supreme Court of the Commonwealth of Puerto Rico erred in convalidating the Labor Relation Board's order which: 1) certified Federación Puertorriqueña de Trabajadores as the union representative of the management and decision making employees that occupied key positions at Federación Puertorriqueña; 2) ordered Federación de Maestros to negotiate and bargain collectively with Federación Puertorriqueña; 3)

deprived petitioner of a due process of law in violation to the Fourteenth Amendment of the Constitution of the United States.

From all the above it is clear that the Labor Relations Board decision and order concerning Federación de Maestros and the status of Federación Puertorriqueña as the exclusive bargaining representative of the Regional Representatives is erroneous. The Resolution of the Supreme Court for the Commonwealth of Puerto Rico convalidating the Labor Relations Board's decision and order is erroneous also, therefore it is requested that this court reverse and leave without effect both, the decision and order of the Labor Relations Board and the Resolution of the Supreme Court of the Commonwealth of Puerto Rico.

RESPECTFULLY SUBMITTED,

In San Juan, Puerto Rico this 13 day of January, 1994.

Godwin Aldarondo Girald

071

**APPENDIX**

EXHIBIT I Ruling of the Supreme court of the Commonwealth of Puerto Rico regarding the writ of Certiorari.....8, 17

EXHIBIT II Ruling of the Supreme Court of the Commonwealth of Puerto Rico regarding the First Motion for Reconsideration.....8, 17

EXHIBIT III Ruling of the Supreme Court of the Commonwealth of Puerto Rico regarding the Second Motion for Reconsideration.....8, 17

EXHIBIT IV Article VIII of Federación de Maestros rules and regulations which deals with the Executive Committee functions. .....13, 18, 20, 23, 33

EXHIBIT V Announcement for job interviews for the position of Regional Representative or Organizer. .....12, 13, 18, 20, 23, 33

EXHIBIT VI Job applications for the position of Regional Repre-

sentative or Organizer.
.....12, 13, 18, 20, 23, 33

EXHIBIT VII Proposal of Evaluation for the position of Regional Representative or Organizer.
.....12, 13, 18, 20, 23, 33

EXHIBIT VIII Letter sent to ex regional representatives regarding the organizational and political functions of the Regional Representatives or Organizers.
.....12, 13, 18, 20, 23, 33

EXHIBIT IX Stipulation between Federación de Maestros and Federación Puertorriqueña.....15

EXHIBIT X Decision and Certification of Representative.....15

EXHIBIT XI Decision and Order, October 31st, 1991.....15

EXHIBIT XII Decision and Order, March 5th, 1992.....16

EXHIBIT XIII Judgment of the Puerto Rico Superior Court, San Juan Part,

December 2nd, 1992.....17

EXHIBIT XIV Notice of Judgment and Judgment of the Commonwealth of Puerto Rico, General Court of Justice, Appeals Court of the Commonwealth of Puerto Rico. .....17

EXHIBIT XV Writ of Certiorari filed before the Supreme Court of the Commonwealth of Puerto Rico. .....17

EXHIBIT XVI Motion for Reconsideration filed before the Supreme Court of the Commonwealth of Puerto Rico. .....17

EXHIBIT XVII Second Motion for Reconsideration filed before the Supreme Court of the Commonwealth of Puerto Rico.....17

EXHIBIT XVIII Puerto Rico Relations Board Hearing Examiner's Report. .....18, 21, 37

EXHIBIT XIX Minutes of the January 29th, 1989, Executive Committee

meeting.....18, 23, 33

EXHIBIT XX Minutes of the April 17th, 1989, Executive Committee meeting. .....18, 23, 33

EXHIBIT XXI Minutes of the November 23rd, 1989, Executive Committee Meeting.....18, 23, 33

EXHIBIT XXII Minutes of the February 3rd, 1990, Executive Committee meeting.....18, 23, 33

EXHIBIT XXIII Minutes of the December 3rd, 1990, Executive Committee meeting.....18, 23, 33

I

**CERTIFIED TRANSLATION**

Exhibit VIII

EXHIBIT I

IN THE PUERTO RICO SUPREME COURT

Puerto Rico Teachers
Federation

Plaintiff & Petitioner

vs.

No. CE-93-192
Certiorari

P.R. Labor Relations Board

Defendent & Respondent

---

RULING

San Juan, Puerto Rico, this 2nd day of July, 1993.

The writ of certiorari is denied.

The appealed judgment of the Puerto Rico Court of Appeals is essentially correct.

So ordered by the Court and so certifies the Chief Clerk. Associate Justice Fuster Berlingeri did not participate.

*[Signature]*
Francisco R. Agrait Lladó
Chief Clerk

*[There is a rubber stamp which reads:]*
NOTICED ON:
July 7 , 19 93
BY: *Andrea García*

- CERTIFIED -
o be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT II

Exhibit IX

IN THE PUERTO RICO SUPREME COURT

Puerto Rico Teachers
Federation

Plaintiff-Petitioner

vs. No. CE-93-192
Certiorari

P.R. Labor Relations Board

Defendent-Respondent

---

Special Summer Session formed by its Chief Justice, Associate Justice Negrón García and Associate Justices Hernández Denton and Alonso Alonso.

RULING

In San Juan, Puerto Rico, this 20th day of August, 1993.

Having examined the first motion for reconsideration, the Court denies same.

So ordered by the Court and so certifies the Chief Deputy Clerk.

*/s/ Carmen [illegible] Cruz Rivera*

Carmen Cruz

Chief Deputy Clerk

- CERTIFIED -

to be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT III

Exhibit X

IN THE PUERTO RICO SUPREME COURT

Puerto Rico Teachers
Federation

Plaintiff-Petitioner

v. No. CE-93-192

Certiorari

Puerto Rico Labor Relations
Board

Defendent-Respondent

Court Session composed of Chief Justice Andréu García
and Associate Justices Negrón García and
Hernández Denton

RULING

San Juan, Puerto Rico, this 17th day of September, 1993.

The second motion for reconsideration is denied.

Petitioner Puerto Rico Teachers Association is to abide by the ruling.

So ordered by the Court and so certifies the Chief Clerk.

*[Signature]*

Francisco R. Agrait Lladó

Chief Clerk

*[There is a rubber stamp which reads:]*

- CERTIFIED -

to be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

NOTICED ON:

Sept. 20 , 19 93

BY: *Andrea García*

CERTIFIED TRANSLATION

EXHIBIT IV

Exhibit I

EXECUTIVE COMMITTEE FUNCTIONS

ARTICLE VIII

EXECUTIVE COMMITTEE

Section 1 - While the Board of Directors is not in session, the supreme authority of the Teachers Federation shall reside in the Executive Committee, subject to the Organization's Constitution and Regulations and the agreements of the Board of Directors, the Delegate Assembly and the General Assembly.

Section 2- The Executive Committee shall be comprised of eleven (11) members elected by the union rank and file. All shall work on a full-time basis.

a. Chairperson

b. Vice-Chair

c. Secretary-Treasurer

d. Secretary of Curriculum and Propaganda

e. Seven (7) Regional Representatives

Section 3- The Executive Committee shall be comprised of eleven (11) members. The four central directors shall be elected by direct secret ballot of the Federation membership and the seven (7) Regional Representatives by the Federation membership of their respective Educational Regions.

Section II — Functions of the Executive Committee

a. It shall be the executive organism of the Puerto Rico Teachers Federation.

b. It shall give a weekly report to the Board of Directors through the Chairperson, including the work performed by the Regional Secretaries and Representatives.

c. It shall carry out the agreements made by the Board of Directors, the Delegate Assembly and the General Assembly.

d. It shall see to the strict compliance with the rules and procedures stipulated in the

Puerto Rico Teachers Federation Constitution and Regulations.

e. It shall gather all the information relevant to the full performance of its functions through its permanent Secretariats.

f. It shall create a national work plan for the Organization, by integrating the various plans of the Secretariats. That plan must be submitted to the Local Unions one month in advance of being considered by the Board of Directors for its approval.

g. After the Local Union is provided with the information, it shall be authorized to initiate sanctions on members who commit acts of indiscipline, disloyalty, improper annulment of representation and acts which violate the statutes, purposes, provisions, growth and development of the Puerto Rico Teachers Federation.

h. It shall critique and engage in self-criticism concerning its own activities

and general condition of the Puerto Rico Teachers Federation.

i. At the request of any Federation member, it shall hold a hearing to settle cases of objection or conflict of interest within or before thirty (30) days from the time it is requested.

j. To work out a wage policy which is to be submitted to the Board of Directors for its approval.

k. It shall create the following work commissions:

1. National Sports and Recreation Commission

2. National Culture Commission

- CERTIFIED -
to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT V

[*logo: PRTF*] **Puerto Rico Teachers Federation**

*[address, etc.]*

July 10, 1987

ANNOUNCEMENT FOR JOB INTERVIEWS

TO : WHOM IT MAY CONCERN

*P.S.S.*

FROM : RENAN SOTO SOTO, PRESIDENT

SUBJECT : ANNOUNCEMENT FOR JOB INTERVIEWS FOR ORGANIZATION & DEVELOPMENT REPRESENTATIVES (ORGANIZERS)

DEPARTMENT : ORGANIZATION & DEVELOPMENT

SUPERVISOR : DIRECTOR DEPARTMENT ORGANIZATION & DEVELOPMENT

NATURE OF THE POSITION

The Office of the President of the Teachers Federation shall supervise the functioning and work of the Organization & Development Representatives, who shall be under the direct supervision of the Department Director. He/she shall be in charge of an organizational section of

ANNOUNCEMENT FOR JOB INTERVIEW FOR ORGANIZERS

the PRTF. This is a position of trust of the Executive Committee.

DUTIES OF THE POSITION

1. He/she shall execute the organizational policy of the Teachers Federation.

2. Together with the Director of the Department of Organization & Development, he/she shall prepare his/her work plan on a monthly basis.

3. He/she shall cover a work section and specific daily goals to develop.

4. One of his/her primary functions shall be to organize the teachers in their work center (schools).

5. Permanent and primary tasks shall be recruitment of new Federation members for the organization and raising the inventory of contacts, in coordination with the directors.

6. He/she shall execute the Organization & Development plan:

a. He/she shall distribute materials,

b. He/she shall train and prepare the school contacts.

ANNOUNCEMENT FOR JOB INTERVIEW FOR ORGANIZERS

7. He/she shall establish daily, defined and quantitative goals in his/her work section.

8. He/she shall create organizational development plans for the locals in his/her area.

9. He/she shall put the organizational policy in practice in the schools under his/her charge.

10. He/she shall raise [the] inventory of school contacts.

11. He/she shall participate in plans for education of the membership in his/her area, districts and daily routes.

12. He/she shall receive complaints or cases and shall process it *[sic]* through the mechanisms estab- lished in the Department of Services.

13. He/she shall visit the amount of schools established on his daily route.

14. He/she shall present and discuss complaints and cases before the Director of Schools or other Representatives of the Department of Education within the established policy and when assigned to do so by the Director of the Department.

15. He/she shall organize and coordinate the seminars and activities for orienting teachers and/or directors.

16. He/she shall participate in the various activities of the Teachers Federation when so required.

17. He/she must stay in close contact and coordination with the Director of the Department of Organization & Development.

18. He/she must attend meetings of the Department assigned, as well as the meetings of the governing bodies of the Teachers Federation when his/her presence is required.

19. He/she shall be in charge of a local within the Systematic Organizational Plan.

20. He/she shall collaborate on those tasks and/or activities required of him/her.

REQUIREMENT[S] FOR THE POSITION

1. Teacher and Federation member.
2. General knowledge about the Teachers Federation.

2. General knowledge about the Teachers Federation.

3. Mastery of oral expression.

ANNOUNCEMENT FOR JOB INTERVIEW FOR ORGANIZERS

4. Availability of time.

5. Ability to work with groups.

6. Ability to work in an organized fashion.

7. Automobile in good condition.

8. Availability to travel through the towns in the assigned area and other areas on the Island.

WAGES : TO BE DISCUSSED

SCHEDULE : FLEXIBLE

BENEFITS : MEDICAL INSURANCE, AUTO AND DRIVER'S INSURANCE AND CHRISTMAS BONUS

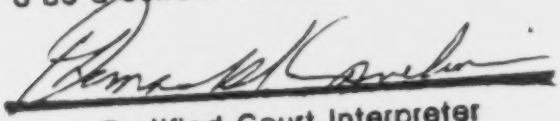
INTERVIEWS: WEDNESDAY JULY 15, 1987 AT 10:00 AM AND 2:00 PM
THURSDAY JULY 16, 1987 AT 10:00 AM AND 2:00 PM

NOTE : Interested persons must report to the interview with their résumé and a letter of recommendation from the union local to which they belong.

rmv

- CERTIFIED -

o be a correct translation prepared by:



Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT VI

[*logo: PRTF*] **Puerto Rico Teachers Federation**

*[address, etc.]*

February 17, 1990

MEMORANDUM

TO : PRTF ORGANIZERS

*[Signature]*

FROM : NEREIDA MARTES RODRIGUEZ,
DIRECTOR DEPARTMENT OF ORGANIZATION &
DEVELOPMENT

SUBJECT : JOB APPLICATIONS

As you are aware, this coming February 18th is the deadline for filing the job application with the Department of Education. Due to agreements concerning organizational policy

approved in the Delegate Assembly, we organizers shall terminate our positions on May 31, 1990.

In order to appear on [the] list of shifts in the PED, it is necessary that all non-permanent organizers file an application. The permanent organizers must notify the superintendent that they will be reporting to their positions in August.

rmv **Together We Struggle!**

- CERTIFIED -

o be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION** — EXHIBIT VII

March 8, 1988

International Woman's Day

PROPOSAL OF EVALUATION FOR ORGANIZATION AND DEVELOPMENT REPRESENTATIVES (ORGANIZERS)

The evaluation phase of organizers in the P.R.T.F. has been one which has historically given rise to intense debates resulting from the very nature of its functions and the various concepts, perceptions and interpretation[s] which are held in their (the organizers') regard. An example which bears mention is the criterion of an employee of trust for us to realize that questions would immediately arise of, why is he or she an employee of trust and who is an employee of trust?

In this proposal we hope to lay down the basis for an objective evaluation of this self-sacrificing group of organizers, in compliance with a responsibility which has

been delegated to us and taking into account this criterion of trust and still others which our functions entail.

I- REGULATORY ASPECTS:

1- The organizer shall be an employee of trust of the Executive Committee.

2- The local unions shall evaluate the work of the organizers.

II- FRAME OF REFERENCE:

1- In the past, the work of the organizers was evaluated on the basis of the functions established for the position (see Functions of organizer, August 3, 1981).

2- Subsequently, an Executive Committee evaluation document was designed which was extended to the local unions for them to evaluate our work as well. This, together with a self-evaluation by the organizer - 1982-83.

3- A much more accurate and objective mechanism of evaluation was formally established, consisting of an evaluation of the organizer's work by the immediate boss (secretary of organization), an evaluation by the locals and a self-evaluation. The difference with what was set forth in point #2 is that in the former it failed to discriminate between the Executive Committee and the immediate boss, [while] in #3 one thing *was* discriminated from the other.

We are going to fulfill the task entrusted to us in a fully responsible manner, so we are submitting before you the following evaluation documents. "We feel that the fairest and most objective way to evaluate our work is the one which is shown in the requirements established in terms of the organisms which we serve".

4- To reorganize the local unions.

5- Functional union education.

6- To develop mechanisms of collective struggle.

7- To work with school contacts.

8- To organize the teachers at their work centers.

9- To attend local meetings.

10- To receive, process and do follow-up on the cases in the Department of Services.

11- Delivery of propaganda, Action, What's Going On? etc.

CAPTION

| E | G | S | D |
|---|---|---|---|
| 3 | 2 | 1 | 0 |

E- Excellent

G- Good

S- Satisfactory

D- Deficient

IV- RECOMMENDATION:

1.- That this evaluation document be discussed as soon as possible and be subjected to amendments by the rest of the organizers, union locals and immediate boss, as the case may be. That the part pertaining to the Locals get down to them.

2- That the criterion of an Executive Committee employee of trust be expanded to include: its highest bodies of direction. Uniform criterion.

3- These evaluation documents shall be effective for one year after they are received, amended and accepted by all parties concerned.

V- REFERENCES:

1- Features for an organizational policy.

2- P.R.T.F. Staff Duties and Functions

3- Organizer's Functions

4- P.R.T.F. Regulations

CORPS OF ORGANIZERS

EVALUATION

COMMISSION

*/s/ Iván Guzmán López*

Iván Guzmán López-Org.

*/s/ Pedro J. Cruz Ayala*

Pedro Cruz- Org.

*/s/Gilbert Rivera*

Gilbert Rivera - Org.

- CERTIFIED -

to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT VIII

FORM LETTER SENT TO

EX-ORGANIZERS

IVAN GUZMAN

ISMAEL GUADALUPE

PEDRO CRUZ

May 31, 1990

JOSE MARTINEZ

JOSE GOMEZ CUBERO

GILBERT RIVERA

As you are aware, the Delegate Assembly agreed to re-organize the structures of the Teachers Federation: by assigning organizational and political functions to the Regional Representative. It has been instituted as a requirement thereof, that said position be elected in the general elections of the Puerto Rico Teachers Federation. This forces us to permanently shut down the Department of Organization and Development.

You had the opportunity to participate in that debate and you likewise had the right and opportunity to run for the elective office, as did other organizers, but you did not do so.

On June 1st, 1990, the new Executive Committee and the new reorganization will begin functioning. Based on that, we have no choice but to dispense with your services effective today, May 31, 1990.

You are being paid your accrued annual leave and sick leave, Act 89 pay and Christmas bonus.

We hope that upon returning to the classroom, you will continue contributing to the struggle of the teaching profession and education in Puerto Rico.

We thank you for the services you have rendered to the Puerto Rico Teachers Federation.

There being nothing further, we remain,

Sincerely,

Renán Soto Soto, President

Puerto Rico Teachers Federation

RSS/mmr

- CERTIFIED -

to be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT IX

EXHIBIT II

| | | |
|---|---|---|
| IN THE CASE OF: | / | CASE NO. P-88-10 |
| | / | |
| PUERTO RICO TEACHERS | / | |
| FEDERATION | / | |
| | / | |
| -AND- | / | |
| | / | |
| PUERTO RICAN FEDERATION | / | |
| OF WORKERS | / | |
| | / | |

---

S T I P U L A T I O N

COME NOW the above-captioned parties, who report the following agreements and stipulations:

1.- The Puerto Rico Teachers Federation recognizes the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the Puerto Rico Teachers

Federation organizers, for the purposes defined in Act 130 Puerto Rico Labor Relations Board, of May 9, 1945, and as established by the Board itself on September 16, 1988, by resolution.

2.- The Puerto Rican Federation of Workers and the contracting unit of the organizers pledge not to exercise their right to collective bargaining in representation of the organizers, as long as certain conditions obtain, which are to be established between the parties on or before March 20, 1989, by making the maximum effort to achieve same.

3.- As part of the agreements, the Puerto Rican Federation of Workers shall withdraw the charges pending before the Labor Relations Board once the aforesaid conditions are established.

4.- So agree the parties, by signing this document.

In San Juan, Puerto Rico, this 8th day of March, 1989.

*/s/ Ramón Fuentes*

*/s/ Renán [illegible]*

RAMON FUENTES President Puerto

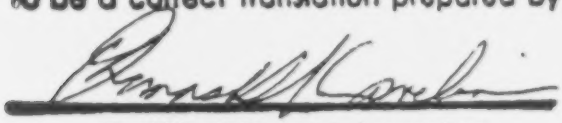
RENAN SOTO SOTO Rican Federation of Workers

President [Puerto Rico

Teachers'] Federation

- CERTIFIED -

to be a correct translation prepared by



Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION

EXHIBIT X

*[official seal]* Commonwealth of Puerto Rico

PUERTO RICO LABOR RELATIONS BOARD

*[address, etc.]*

*[illegible rubric]*

MAR 30 1989

IN THE CASE OF:

| | |
|---|---|
| PUERTO RICO TEACHERS FEDERATION | * CASE NO. P-88-10 * D-89-1121 |
| - and - | |
| PUERTO RICAN FEDERATION OF WORKERS | |

**********

BEFORE: Antonio Rodas Viñas, Esq.

Examining Official

APPEARANCES:

Angel Pérez Muñiz, Esq.

For the Employer

Alejandro Torres Rivera, Esq.

For the Union

DECISION AND CERTIFICATION OF REPRESENTATIVE

On July 1, 1988, the Puerto Rican Federation of Workers, hereinafter called Petitioner, filed before the Labor Relations Board, hereinafter called the Board, a Petition of Investigation and Certification of Represen-tative, in which it alleged that a controversy had arisen concerning the representation of all the Organization & Development Representatives used by the employer, the Puerto Rico Teachers Federation.

The Chairperson of the Board ordered elections held prior to the hearing, in accordance with the power vested in him by the Board's Article III, Section 6(a) of Regulation Number 2.

The elections were held on October 13, 1988, under the direction and supervision of the Board's Chief Examiner, Atty. Olga Iris Cortés Coriano. Participating in same was the Puerto Rican Federation of Workers, and the results, as shown in the Voting Check Sheet, a copy of which was supplied to the parties, were the following:

1. Number of Eligible Voters.....9
2. Valid votes counted.....7
3. Votes in favor of the Puerto Rican Federation of Workers...7
4. Votes against the participating union.....0
5. Votes challenged.....0
6. Invalid votes.....0
7. Votes left blank.....0

It is evident that Petitioner had a majority of the valid votes issued by the

workers of the employer, the Puerto Rico Teachers Federation.

A functionary of the Board's Investigations Division took steps to have the legal representative of the employer sign a "Post-election Recognition Agreement". The employer, in a communication dated August 23, 1988, informed the Board that it did not recognize petitioners as a contracting unit on the grounds stated therein.

The Board, after analyzing the case file, agreed to order the holding of a Public Hearing. This was held on March 8, 1989.

At the start the public hearing, the parties informed the Examining Official that they had reached an agreement by virtue of which the Puerto Rico Teachers Federation would recognize the Puerto Rican Federation of Workers as the exclusive representative of the

contracting unit of the Puerto Rico Teachers Federation's organizers, for the purposes defined in Act 130 of May 8, 1945, known as the Labor Relations Act.

---

1/ T.O., Pages 1 and 2

In view of all the above and in accordance with the authority conferred on the Puerto Rico Labor Relations Board in Article 5, Paragraph 3 of the Puerto Rico Labor Relations Act, and based on the results of the elections held on October 13, 1988, IT IS HEREBY CERTIFIED THAT:

The Puerto Rican Federation of Workers has been designated and elected by a majority of the employees used by the employer, Puerto Rico Teachers Federation, as their representative in the aforesaid suitable

unit. Pursuant to Article 5, Paragraph (1) of the Puerto Rico Labor Relations Act, the Puerto Rican Federation of Workers is the exclusive representative of the aforesaid workers, for purposes of collective bargaining in regard to types of pay, wages, working hours and other conditions of employment.

In San Juan, Puerto Rico, this 28th day of March, 1989.

*[illegible signature]*
Samuel E. de la Rosa Valencia,
President

*/s/ Estanislao García Vázquez*
Estanislau García Vázquez
Associate Member
*[illegible signature]*
Carlos Roca Rosselli

Associate Member

*[There is a circular seal which reads:]* PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL

NOTICE

WE CERTIFY: That we have sent a copy of the instant Decision and Certification of Representative, by ordinary mail, to:

1.- Angel Pérez Muñiz, Esq.
PEREZ MUÑIZ, SANTIAGO-MELENDEZ
204 Domenech Ave.
Hato Rey, Puerto Rico 00918

2.- Puerto Rican Federation of Workers
516 Dresde Street
Puerto Nuevo, Puerto Rico 00920

In San Juan, Puerto Rico, this 29th day of March, 1989.

*/s/ Ruth Santiago Santiago*

Ruth Santiago Santiago

Assistant Secretary of the Board

*[There is a circular seal which reads:]* PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL

- CERTIFIED -

o be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

*[official seal]* Commonwealth of Puerto Rico

PUERTO RICO LABOR RELATIONS BOARD

*[address, etc.]*

*Exhibit IV*

| | | |
|---|---|---|
| IN THE CASE OF: | * | |
| | * | |
| PUERTO RICO TEACHERS | * | |
| FEDERATION (RESPONDENT) | * | |
| | * | |
| -AND- | * | CASE NO. CA-89-57 |
| | * | D-91- 1193 |
| PUERTO RICAN FEDERATION | * | |
| OF WORKERS (COMPLAINANT) | * | |

---

Before: Agnes Maisonet de Marcano, Esq.

Administrative Judge

APPEARANCES:

Raúl Pérez Muñiz, Esq.

Raúl Santiago Meléndez, Esq.

For the Teachers Federation

Migdalia Adrover Rodríguez, Esq.

For the Public Interest

Mr. Ramón Fuentes

For the Puerto Rican Federation

of Workers

D E C I S I O N  A N D  O R D E R

On June 14, 1990, the Report of the Examining Official, Atty. Agnes Maisonet de Marcano, was issued. The same contains a recommendation to dismiss the complaint, even though she concludes that the respondent committed the refusal to bargain alleged,[1] since

---

[1] Under our Labor Relations Act, it constitutes an unlawful labor practice within the meaning of Article 8 (1) (d), 29 LPRA 69 (1) (d).

in her judgment, the complaining union is also liable *in solidum* for said unlawful conduct.[2]

On August 9, 1990, legal counsel for the Public Interest, Atty. Leticia Rodríguez García, filed a brief of Exceptions to the Report of the Examining Official, which was not answered by the employer.

We have reviewed the rulings issued in this case and they are hereby confirmed inasmuch as no prejudicial error whatever was committed.[3]

---

[2] Although not expressly stating so, this is an application of the doctrine of countercharge. Nevertheless, our law only contemplates the application thereof in the context of Article 8 (1) (f).

[3] With respect to the procedural aspect ruled upon by the Examining Official with relation to the entering of default, we adopt in their entirety the statements contained at pages 6-7 of the Report.

After analyzing the entire case file with the evidence submitted and the arguments of the parties, the Board adopts the conclusions of fact and the analysis through page 14 of the Report. We are likewise in agreement with what it states in the sense that:

> " There is no doubt whatever that the fundamental conditions demanded by the Act and case law for there to be a refusal to bargain have been fulfilled in this case."[4]

This is the essential conclusion of the case from which it necessarily becomes clear that the unlawful labor practice of which the respondent employer is accused did occur. We cannot be in agreement with the Examining Official when she recommends that, notwithstanding the foregoing, the complaint be dismissed. She bases her judgment on her

---

[4] Report of the Examining Official, page 16.

appreciation that both parties assumed an attitude of bad faith in the bargaining process, colored by "marked antagonism". She concludes her Report by recommending that the parties be counselled to "carry out the collective bargaining free of quarrelling and hostilities . . ."[5]

Without doubt, collective bargaining is a dynamic, dual process, in which both parties give up and obtain rights, guarantees and benefits through offers and counter-offers. The agreement which they reach will govern their mutual relations for a period of time. For this reason, it is logical to affirm that negotiating in good faith is a reciprocal obligation. Nevertheless, under our Act the "refusal to negotiate" is an unlawful labor practice enacted against the employer alone.[6] Without going into

---

[5] Id., at page 17.

[6] In the Federal jurisdiction, Article 8 (b) (3) of the National Labor

considerations about the desirability or undesirability of amending our statute in this aspect, the truth is that the conclusion is inescapable that in this case the employer committed the unlawful practice it is accused of. It is our judgment that even though there was an unlawful practice of refusal to bargain on the part of the workers' organizations, and that it had been committed by the union in this case, it would not prevent us from issuing an order to the respondent employee to bargain in good faith.

As it is clearly set forth in the Exceptions to the Report:

> " This refusal by the employer appears to be a withdrawal of the latter's recognition, a few days after it was made, violating the

---

Relations Act contains the refusal to bargain as an unlawful labor practice by labor organizations.

> state of law and causing . . . instability in the labor field and lack of trust in the institutional procedures established to guarantee the practice of collective bargaining."[7]

The record is glaringly clear that the Teachers Federation, apparently regretting that it had subscribed the Stipulation wherein it recognized the above-captioned union for the ends and purposes of our Act, changed its course of action and refused to bargain collectively with the organizers' representatives. Hence, it ignored the letters from the Union,[8] and its

---

[7] Exceptions to the Examining Official's Report, p. 5.

[8] We agree with the Examining Official in the sense that even though the letters from the union do not comply with technical requirements, the truth is that they served their purpose of indicating

President adduced that he had no authority to negotiate a collective bargaining agreement.[9] It is therefore inescapable to conclude that an unlawful labor practice was committed, which must be remedied in accordance with the provisions of our Act, thus fostering industrial peace, a cardinal principle in labor-management relations.

C O N C L U S I O N S  O F  L A W

I. Respondent:

---

the desire to bargain, including an a g r e e m e n t

(continued...)

[8](...continued)
proposal. The employer, if it wished to comply with its legal duty, could have bargained.

[9] T. O. pages 59, 60, 77, 78.

The Puerto Rico Teachers Federation is an entity which engages in organizing teachers by utilizing employees, and constitutes an employer within the meaning of Article 2 (2) of the Act.

II. Complainant:

The Puerto Rican Federation of Workers is an entity which engages in representing employees before their employee, through collective bargaining, constituting a labor organization within the meaning of Article 2 (10) of the Act.

III. The Unlawful Labor Practice:

By refusing to bargain collectively with the "organizers'" exclusive representative, the Puerto Rico Teachers Federation committed an unlawful labor practice pursuant to the provisions of Article 8 (1) (d) of the Act.

Pursuant to the provisions of Article 9 (1) (b) of the Act and by virtue of the conclusions

of fact and law in the above-captioned case, we issue the following

**O R D E R**

The Puerto Rico Teachers Federation, its agents, officers, successors and assigns must:

1. Cease and desist from refusing to negotiate a collective bargaining agreement with the Puerto Rican Federation of Workers, at the latter's request.

2. Carry out the following affirmative actions to help fulfill the purposes of the Act:

a. To bargain collectively with the Puerto Rican Federation of Workers, at the latter's request, concerning wages and working conditions for employees in the suitable unit certified by this Board in Decision No. 89-1121.

b. To post in places visible to its employees, for a term of thirty (30) consecutive days, copies of the "Notice to

All Our Employees" which is attached to the instant Decision and Order.

c. To report to the Chairperson of the Board, within fifteen (15) days after notice, the measures taken to comply with the orders herein.

Pursuant to the provisions of Section 3.15 of Act 170 (Uniform Administrative Procedure) of August 12, 1988, as amended, the party adversely affected by the instant Decision and Order may file a Motion for Reconsideration within the term of twenty (20) days from the date on which notice is filed.

In San Juan, Puerto Rico, this 31st day of October, 1991.

*/s/ S. de la Rosa*

Samuel E. de la Rosa Valencia, Esq.

Chairperson

*/s/ Estanislao García Vázquez*

Estanislau García Vázquez

Associate Member

**N O T I C E**

I certify that a copy of the instant Decision and Order was sent this day by certified mail to:

1. Angel Raúl Pérez-Muñiz, Esq.
PEREZ MUÑIZ & SANTIAGO MELENDEZ LAW OFFICES
204 Domenech Ave.
Hato Rey, Puerto Rico 00918

and by ordinary mail to:

2. P.R. Teachers Federation
1572 Ponce de León
Caribe Development
Río Piedras, Puerto Rico 00927

3. Puerto Rican Workers' Federation
516 Dresde Street
Puerto Nuevo, Puerto Rico 00920

4. Leticia Rodríguez, Esq.
Director, Legal Division
Puerto Rico Labor Relations
Board (hand-delivered)

In San Juan, Puerto Rico, October 31, 1991.

*/s/ Leonor Rodríguez Rodríguez*

Acting Secretary of the Board

*[A circular seal reads:]* PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL

**NOTICE TO OUR EMPLOYEES**

In compliance with a Decision and Order of the Puerto Rico Labor Relations Board and in order to carry out the policy of the Puerto Rico Labor Relations Act, WE ARE NOTIFYING ALL OF OUR EMPLOYEES THAT:

WE, The Puerto Rico Teachers Federation, our agents, officers, successors and assigns:

1. Shall cease and desist from refusing to bargain collectively with the Puerto Rican Federation of Workers.

2. We shall bargain collectively with the Puerto Rican Federation of Workers, at the latter's request, concerning wages and working conditions for the employees in the suitable unit certified by the Board in Decision and Order No. 89-1121.

PUERTO RICO TEACHERS FEDERATION

By: _____

_____

Representative

Title

Date: _____

_____

_____

This Notice must remain posed in places visible to the employees for a period no less than thirty (30) consecutive days and must in no way be altered, modified or covered.

- CERTIFIED -

to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT XII

*[official seal]* Commonwealth of Puerto Rico

PUERTO RICO LABOR RELATIONS BOARD

*[address, etc.]*

Exhibit V

| | | |
|---|---|---|
| IN THE CASE OF: | * | |
| PUERTO RICO TEACHERS | * | |
| FEDERATION (RESPONDENT) | * | |
| -AND- | * | CASE NO. CA-89-57 |
| | * | D-91-1201 |
| PUERTO RICAN FEDERATION | * | |
| OF WORKERS (COMPLAINANT) | * | |

---

Before: Agnes Maisonet de Marcano, Esq.

Administrative Judge

APPEARANCES:

Raúl Pérez Muñiz, Esq.

Raúl Santiago Meléndez, Esq.

For the Teachers Federation

Migdalia Adrover Rodríguez, Esq.

For the Public Interest

Mr. Ramón Fuentes

For the Puerto Rican Federation

of Workers

D E C I S I O N  A N D  O R D E R

On June 14, 1990, the Report of the Examining Official, Atty. Agnes Maisonet de Marcano, was issued. The same contains a recommendation to dismiss the complaint, even though she concludes that the respondent committed the refusal to bargain alleged,[1] since

---

[1] Under our Labor Relations Act, it constitutes an unlawful labor practice within the meaning of Article 8 (1) (d), 29 LPRA 69 (1) (d).

in her judgment, the complaining union is also liable *in solidum* for said unlawful conduct.[2]

On August 9, 1990, legal counsel for the Public Interest, Atty. Leticia Rodríguez García, filed a brief of Exceptions to the Report of the Examining Official, which was not answered by the employer.

We have reviewed the rulings issued in this case and they are hereby confirmed inasmuch as no prejudicial error whatever was committed.[3]

---

[2] Although not expressly stating so, this is an application of the doctrine of countercharge. Nevertheless, our law only contemplates the application thereof in the context of Article 8 (1) (f).

[3] With respect to the procedural aspect ruled upon by the Examining Official with relation to the entering of default, we

After analyzing the entire case file with the evidence submitted and the arguments of the parties, the Board adopts the conclusions of fact and the analysis through page 14 of the Report. We are likewise in agreement with what it states in the sense that:

> " There is no doubt whatever that the fundamental conditions demanded by the Act and case law for there to be a refusal to bargain have been fulfilled in this case."[4]

This is the essential conclusion of the case from which it necessarily becomes clear that the unlawful labor practice of which the

---

[12](...continued)

adopt in their entirety the statements contained at pages 6-7 of the Report.

[4] Report of the Examining Official, page 16.

respondent employer is accused did occur. We cannot be in agreement with the Examining Official when she recommends that, notwithstanding the foregoing, the complaint be dismissed. She bases her judgment on her appreciation that both parties assumed an attitude of bad faith in the bargaining process, colored by "marked antagonism". She concludes her Report by recommending that the parties be counselled to "carry out the collective bargaining free of quarrelling and hostilities . . ."[5]

Without doubt, collective bargaining is a dynamic, dual process, in which both parties give up and obtain rights, guarantees and benefits through offers and counter-offers. The agreement which they reach will govern their mutual relations for a period of time. For this reason, it is logical to affirm that negotiating

---

[5] Id., at page 17.

in good faith is a reciprocal obligation. Nevertheless, under our Act the "refusal to negotiate" is an unlawful labor practice enacted against the employer alone.[6] Without going into considerations about the desirability or undesirability of amending our statute in this aspect, the truth is that the conclusion is inescapable that in this case the employer committed the unlawful practice it is accused of. It is our judgment that even though there was an unlawful practice of refusal to bargain on the part of the workers' organizations, and that it had been committed by the union in this case, it would not prevent us from issuing an order to the respondent employee to bargain in good faith.

---

[6] In the Federal jurisdiction, Article 8 (b) (3) of the National Labor Relations Act contains

As is clearly set forth in the Exceptions to the Report:

> "This refusal by the employer appears to be a withdrawal of the latter's recognition, a few days after it was made, violating the state of law and causing . . . instability in the labor field and lack of trust in the institutional procedures established to guarantee the practice of collective bargaining."[7]

The record is glaringly clear that the Teachers Federation, apparently regretting that it had subscribed the Stipulation wherein it recognized the above-captioned union for the ends and purposes of our Act, changed its course of action and refused to bargain collectively with the organizers' representatives. Hence, it

---

[7] Exceptions to the Examining Official's Report, p. 5.

ignored the letters from the Union,[8] and its President adduced that he had no authority to negotiate a collective bargaining agreement.[9] It is therefore inescapable to conclude that an unlawful labor practice was committed, which must be remedied in accordance with the provisions of our Act, thus fostering industrial peace, a cardinal principle in labor-management relations.

---

[8] We agree with the Examining Official in the sense that even though the letters from the union do not comply with technical requirements, the truth is that they served their purpose of indicating the desire to bargain, including an agreement proposal. The employer, if it wished to comply with its legal duty, could have bargained.

[9] T. O. pages 59, 60, 77, 78.

# C O N C L U S I O N S  O F  L A W

I. Respondent:

The Puerto Rico Teachers Federation is an entity which engages in organizing teachers by utilizing employees, and constitutes an employer within the meaning of Article 2 (2) of the Act.

II. Complainant:

The Puerto Rican Federation of Workers is an entity which engages in representing employees before their employee, through collective bargaining, constituting a labor organization within the meaning of Article 2 (10) of the Act.

III. The Unlawful Labor Practice:

By refusing to bargain collectively with the "organizers'" exclusive representative, the Puerto Rico Teachers Federation committed an

unlawful labor practice pursuant to the provisions of Article 8 (1) (d) of the Act.

Pursuant to the provisions of Article 9 (1) (b) of the Act and by virtue of the conclusions of fact and law in the above-captioned case, we issue the following

**O R D E R**

The Puerto Rico Teachers Federation, its agents,
officers, successors and assigns must:

1. Cease and desist from refusing to negotiate a collective bargaining agreement with the Puerto Rican Federation of Workers, at the latter's request.

2. Carry out the following affirmative actions to help fulfill the purposes of the Act:

a. To bargain collectively with the Puerto Rican Federation of Workers, at the latter's request, concerning wages and working conditions for employees in the

suitable unit certified by this Board in Decision No. 89-1121.

b. To post in places visible to its employees, for a term of thirty (30) consecutive days, copies of the "Notice to All Our Employees" which is attached to the instant Decision and Order.

c. To report to the Chairperson of the Board, within fifteen (15) days after notice, the measures taken to comply with the orders herein.

Pursuant to the provisions of Section 3.15 of Act 170 (Uniform Administrative Procedure) of August 12, 1988, as amended, the party adversely affected by the instant Decision and Order may file a Motion for Reconsideration within the term of twenty (20) days from the date on which notice is filed.

In San Juan, Puerto Rico, this 5th day of March, 1992.

*/s/ S. de la Rosa*

Samuel E. de la Rosa Valencia, Esq.

Chairperson

*/s/ Estanislao García Vázquez*

Estanislau García Vázquez

Associate Member

**N O T I C E**

I certify that a copy of the instant Decision and Order was sent this day by certified mail to:

1. Angel Raúl Pérez-Muñiz, Esq.

PEREZ MUÑIZ & SANTIAGO MELENDEZ LAW OFFICES

204 Domenech Ave.

Hato Rey, Puerto Rico 00918

and by ordinary mail to:

2. P.R. Teachers Federation

1572 Ponce de León

Caribe Development

Río Piedras, Puerto Rico 00927

3. Puerto Rican Workers' Federation
516 Dresde Street
Puerto Nuevo, Puerto Rico 00920

4. Leticia Rodríguez, Esq.
Director, Legal Division
Puerto Rico Labor Relations
Board (hand-delivered)

In San Juan, Puerto Rico, October 31, 1991.

/s/ *Leonor Rodríguez Rodríguez*
Acting Secretary of the Board

**NOTICE TO OUR EMPLOYEES**

In compliance with a Decision and Order of the Puerto Rico Labor Relations Board and in order to carry out the policy of the Puerto Rico Labor Relations Act, WE ARE NOTIFYING ALL OF OUR EMPLOYEES THAT:

WE, The Puerto Rico Teachers Federation, our agents, officers, successors and assigns:

1. Shall cease and desist from refusing to bargain collectively with the Puerto Rican Federation of Workers.

2. We shall bargain collectively with the Puerto Rican Federation of Workers, at the latter's request, concerning wages and working conditions for the employees in the suitable unit certified by the Board in Decision and Order No. 89-1121.

PUERTO RICO TEACHERS FEDERATION

By: _____

_____

Representative

Title

Date: _____

_____

_____

This Notice must remain posed in places visible to the employees for a period no less than thirty (30) consecutive days and must in no way be altered, modified or covered.

- CERTIFIED -

to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT VI

EXHIBIT XIII

IN THE PUERTO RICO SUPERIOR COURT

SAN JUAN PART

| | |
|---|---|
| PUERTO RICO LABOR RELATIONS BOARD | FILE NO. KAC92-(901) |
| Petitioner | |
| vs. | IN RE: |
| PUERTO RICO TEACHERS FEDERATION | PETITION TO DECISION AND |
| Defendant | |

JUDGMENT

Judgment is entered enforcing Decision and Order No. D-92-1201 in Case CA 89-57, issued on March 5, 1992 by the Labor Relations Board against the Puerto Rico Teachers Federation,

which must observe strict compliance with the provisions of the Order. They are warned of the legal mandate that non-compliance with the provisions herein shall constitute contempt of this Court.

In certain union elections the Puerto Rican Federation of Workers (PFOW) obtained a majority of the votes of the representatives of organization and development of the Puerto Rico Teachers Federation (PRTF). Faced with the initial refusal by the Teachers Federation to recognize and bargain with the PFOW as the exclusive representative of the employees concerned, adducing that the "organizers" of the Teachers Federation are employees who are intimately linked to managerial interest, which places them outside the definition of "employee" contained in the Puerto Rico Labor Relations Act, the Labor Relations Board held a Public Hearing. Once the hearing had gotten underway, the PFOW and the Teachers Federation agreed on

and submitted a stipulation by virtue of which the Teachers Federation recognized the PFOW as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation for purposes of collective bargaining.

The stipulation provides as follows:

STIPULATION

Come now the above-captioned parties, who report the following agreements and stipulations:

1. The Puerto Rico Teachers Federation recognizes the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for the purposes defined in Act 130 Puerto Rico Labor Relations Board, of May 9, 1945, and according to the

Board itself, it was established on September 16, 1988, by resolution.

2. The Puerto Rican Federation of Workers and the contracting Unit of the organizers pledge not to exercise their right to collective bargaining in representation of the organizers, as long as certain conditions obtain, which are to be established between the parties on or before March 20, 1989, by making the maximum effort to achieve same.

3. As part of the agreements, the Puerto Rican Federation of Workers shall withdraw the charges pending before the Labor Relations board once the aforesaid conditions are established.

4. So agree the parties, having signed this document.

In San Juan, Puerto Rico, this 8th day of March, 1989.

RAMON FUENTES, President
Puerto Rican Federation of Workers

RENAN SOTO, President
Puerto Rico Teachers' Federation

On October 13, 1988, after studying and considering the stipulation, the Labor Relations Board certified the PFOW as the representative of the employees who comprise the suitable unit ("all the representatives of organization and development utilized by the Puerto Rico Teachers Federation"). The Board then closed and filed the case concerning representation on March 28, 1989.

Subsequently, after the PFOW had already been certified, the parties met to discuss the conditions alluded to in the above-transcribed stipulation. The meetings were not fruitful and the conditions did not obtain which, had they been achieved, bound the PFOW not to exercise its right to bargain collectively. For that reason, the PFOW required the Teachers Federation to bargain in the interest of the components of the unit. The Teachers Federation refused to negotiate, adducing that it was not authorized to bargain collectively regarding working terms and conditions of its "organizers" inasmuch as the latter had a conflict of interest in their function as "unionized employee" because they were intimately linked to management. In the face of the refusal by the Teachers Federation to negotiate, the PFOW once more petitioned for the intervention of the Board, which, following the necessary investigation, issued a complaint against the

Puerto Rico Teachers Federation for unlawful practice.

Following the proceedings and a report by an examining official, whose recommendations it did not follow, the Labor Relations Board concluded that the employee committed the unlawful practice of refusal to bargain and issued orders against the Teachers Federation to cease and desist from refusing to negotiate a collective bargaining agreement with the PFOW and, affirmatively, ordered it to negotiate a collective bargaining agreement. In the face of the non-compliance with the order by the Teachers Federation, the Board petitioned this Court to enforce the Decision and Order against the Teachers Federation.

In it's opposition to the Board's petition, the Teachers Federation holds that the "organizers" of the Federation are not entitled to constitute a labor union and to negotiate a collective bargaining agreement because due to

the complex and broad nature of their functions, their independence from central supervision and independence of judgment, the confidential nature of their assignment and functions, and because they are considered and treated as employees of trust, they have a conflict of interest in their functions as a "unionized employee" because they are intimately linked to management, and are management itself, wherefor they are excluded from the term "employee" in the Labor Relations Act.

As an element of opposition, the Teachers Federation adduces additionally that it was deprived of presenting evidence before the Board concerning the exclusion of the "organizers" from the Labor Relations Act and the unsuitableness of the unit. It holds, moreover, that this controversy, concerning whether the "organizers", by virtue of their functions, may or may not belong to the labor union, was not ruled upon by the Board.

On the latter subject, the Teachers Federation is correct. The controversy was not ruled upon by the Board. It was ruled upon by the parties themselves in the settlement stipulation which was transcribed above in its entirety, wherefor it was not necessary to present evidence.

The stipulation of this case constitutes a settlement which is, in turn, a contract by which the parties, supposing that the litigious issue is doubtful or because they entertain doubts about their respective rights, each one giving, promising or withholding something, avoid the provocation of a lawsuit or put an end (as they did before the [Labor] Relations Board) to the one they had started. As such, the settlement stipulation in this case recognizes rights and had the scope of adjudication of such rights, implying a formal abandonment of any contention contrary thereto. Once the settlement stipulation was approved, as, in

effect, it was approved by the Board, it binds the parties and those whom they represent. In binding the parties, the settlement stipulation contract has the effect of res judicata. (See Articles 1709, 1714 and 1715 of the Civil Code; 31 LPRA Secs. 4821, 4826 and 4827; Negrón Rivera v. Bonilla, Ex parte, 120 DPR 61, 74; Sucn. Román v. Shelga Corp., 111 DPR 782, 787; P.R. Glase Corp. v. Tribunal Superior, 103 DPR 223, 230; Vélez Torres, José Ramos, Curso de Derecho Civil, Derecho de Contratos, Tome IV, Vol. II, Pub. 1990, Chapter XIII, pp. 495-507).

Do words not have sense? Is it not to make things clear that agreements, contracts, concessions and permits are put down in writing? (See Texaco Inc. v. Secretario de Obras Públicas, 85 DPR 712, 718). The Teachers Federation as an employer, recognized, pledged and bound itself with the PFOW "as the exclusive representative of the contracting unit of its organizers" for all the purposes of the Puerto

Rico Labor Relations Act. In so doing, it neither placed nor established any conditions. It made a categorical and absolute recognition.

For its part, and in the face of that recognition by the Teachers Federation, the PFOW pledged not to exercise its right to bargain collectively in representation of the organizers, "as long as certain conditions obtain..." This commitment not to bargain made by the PFOW, already accepted and recognized as the organizers' representative, constituted a conditional obligation which was extinguished when the event or realization of what was expected did not take place. When its conditional obligation was extinguished, the PFOW was from that point on free to exercise its right to bargain collectively with the Teachers Federation, a right which is consonant with and emerges from the categorical and absolute recognition which the Teachers Federation had

given it as the exclusive representative of its "organizers".

When the recognition by the Teachers Federation of the PFOW as the representative of its "organizers" pledged or linked it to the now unconditional right of the PFOW to have the Teachers Federation, as an employer, bargain with it in a collective bargaining agreement, and when it refused to so negotiate, the Labor Relations Board decided and acted correctly in finding that the Teachers Federation had committed an unlawful labor practice and in ordering it to bargain collectively. The Puerto Rico Teachers Federation must comply with that order which, in effect, orders it to comply with a commitment or contract which it had validly entered into with the Puerto Rican Federation of Workers.

TO BE RECORDED AND NOTICED.

Given in San Juan, Puerto Rico, this 2nd day of December, 1992.

(sgd) *FE Cumpiano*

FLAVIO E. CUMPIANO

JUDGE

I CERTIFY:

Paulita Santiago Cartagena

Chief Clerk

By: *[Signature]*

Deputy Clerk

- CERTIFIED -

To be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION** —

EXHIBIT XIV

EXHIBIT VII

COMMONWEALTH OF PUERTO RICO

P. 01 GENERAL COURT OF JUSTICE

APPEALS COURT NORTH SECTION

UNITED STATES OF AMERICA, ]

THE PRESIDENT OF THE UNITED] SS:

STATES COMMONWEALTH OF P.R.]

P. R. LABOR RELAT.

BOARD RECD CASE NO: SNCE93-0034

MOVANT REF. NO: K AC92-0397

VS.

P. R. TEACHERS FEDERATION RECT CERTIORARI

RESPONDENT MATERIAL

ALDARONDO GIRALD GODWIN, ESQ.

LEMANS CONDOMINIUM

SUITE 803 602 MUÑOZ RIVERA

HATO REY PR 00918

NOTICE OF JUDGMENT

THE UNDERSIGNED CLERK HEREBY NOTIFIES YOU THAT THIS COURT HAS ENTERED JUDGMENT IN THE

ABOVE-CAPTIONED CASE DATED APRIL 30 1993 , WHICH HAS BEEN DULY RECORDED AND PLACED IN THE CASE FILE OF THIS CASE, WHERE YOU MAY LEARN IN DETAIL OF THE TERMS THEREOF.

AND, AS YOU ARE OR REPRESENT THE PARTY ADVERSELY AFFECTED BY THE JUDGMENT, ON WHICH YOU MAY FILE AN APPEAL, I AM ADDRESSING THIS NOTICE TO YOU, AND HAVE PLACED A COPY THEREOF IN THE CASE FILE DATED APRIL 30, 1993 .

RODRIGUEZ GARCIA LETICIA

P. O. BOX 14427 EST. BARRIO OBRERO

SANTURCE, PR 00916

SAN JUAN, PUERTO RICO, ON 05 MAY 1993

YOLANDA TOYOS OLASCOAGA

---

CHIEF CLERK

*[initials]*

BY: ELGA PEREZ

---

DEPUTY CLERK

- CERTIFIED - to be a correct translation prepared by: Certified Court Interpreter Administrative Office of the United States Courts

O.A.T. 704-NOTICE OF JUDGMENT

**CERTIFIED TRANSLATION**

IN THE PUERTO RICO COURT
OF APPEALS NORTH SECTION

| | | |
|---|---|---|
| PUERTO RICO LABOR RELATIONS BOARD<br>Appellee | Certiorari<br>originating in<br>SNCE-93-0034 | the Superior Court San Juan Part |
| v. | | |
| PUERTO RICO TEACHERS' FEDERATION<br>Petitioner | | Administrative Review, Labor Law |
| | | KAC92-0937 |

Panel formed by its chief judge, Judge Sánchez Martínez, and Judges Ramos Buonomo and Segarra Olivero.

Judge Sánchez Martínez, writing for the Court.

JUDGMENT

San Juan, Puerto Rico, on April 30, 1993.

Through this writ of certiorari the Teachers Federation prays that we set aside the judgment entered by the Superior Court, San Juan Part (Hon. Flavio E. Cumpiano, J.), which enforces the Labor Relations Board's decision ordering petitioner Puerto Rico Teachers Federation to recognize the Puerto Rican Federation of Workers as the exclusive representative of its unit of organizers, and, in addition, to initiate the process of collective bargaining.

- I -

On July 1, 1988, the Puerto Rican Federation of Workers (the union) filed with the Labor Relations Board (the Board) a petition for

investigation and certification of representative in which it alleged that a controversy had arisen concerning the representation of the employees who are organizers for the Puerto Rico Teachers Federation (the employer) by a suitable unit for collective bargaining.([1]) It requested the Board to rule on the controversy following an investigation.

To that effect, the chairperson of the Board ordered elections to be held prior to the hearing required pursuant to Art. 5 of the Labor Relations Act, Act No. 130 of May 8, 1945, as amended, 29 L.P.R.A. sec. 66(3), and Art. III, Sec. 6(a) of Regulation No. 2 of the Labor Relations Board. As a result of said elections,

---

[1] The petitioned unit included "all the representatives of organization and development utilized by the Puerto Rico Teachers Federation" (Appendix, p. 97).

the union won the majority of valid votes issued by the employees of the Teachers Federation entitled to vote.

Following the elections, the Investigations Division of the Labor Relations Board took steps to have the employer recognize the new union organization as the exclusive representative of the employees concerned for purposes of collective bargaining. The employer refused, feeling that "the latter are employees who are intimately linked to managerial interest, which places them outside the definition of 'employee' contained in the Puerto Rico Labor Relations Act (Appendix, p. 98).

In the face of this, then, the Board ordered the holding of a public hearing, which took place on March 8, 1989. Once the hearing had gotten underway, the parties reported to the examining official that they had arrived at an agreement by written stipulation. Said

stipulation reads as follows (Writ of certiorari, p. 3):

STIPULATION

COME NOW the above-captioned parties, who report the following agreements and stipulations:

1. The Puerto Rico Teachers Federation recognizes the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for the purposes defined in Act 130 Puerto Rico Labor Relations Board, of May 9, 1945, and according to the Board itself,

it was established on September 16, 1988, by resolution.

2. The Puerto Rican Federation of Workers and the contracting Unit of the organizers pledge not to exercise their right to collective bargaining in representation of the organizers, as long as certain conditions obtain, which are to be established between the parties on or before March 20, 1989, by making the maximum effort to achieve same.

3. As part of the agreements, the Puerto Rican Federation of Workers shall

withdraw the charges pending before the Labor Relations board once the aforesaid conditions are established.

4. So agree the parties, having signed this document.

In San Juan, Puerto Rico, this 8th day of March, 1989.

(Sgd) RAMON FUENTES, President
Puerto Rican Federation of Workers
(Sgd) RENAN SOTO SOTO
President Puerto Rico
Teachers Federation

On the basis of this stipulation, the Labor Relations Board issued a Certification of Representative on March 20, 1989, in favor of

the Puerto Rican Federation of Workers, in which it designated it as the exclusive representative of the aforesaid employees.

On that same day, pursuant to the provisions of the second clause in the said stipulation, the parties met and the union delivered a proposal to the employer in which it included the specific conditions on which its waiver of collective bargaining would rest. Nevertheless, the proposed conditions were not accepted by the employer, for which reason a second meeting was agreed upon for March 31, 1989. On this occasion, the union served notice through a letter to Mr. Renán Soto, the President of the Teachers Federation, (the employer) of its intention to initiate the processes of collective bargaining. Mr. Soto declined to negotiate a collective bargaining agreement, alleging that he was not authorized to do so. In like manner, the union

subsequently requested the employer on several occasions to initiate the processes of collective bargaining without any results.

Faced with this situation, the union filed a grievance against the employer before the Labor Relations Board. After several hearings, the Board concluded that the employer had committed an unlawful labor practice by refusing to bargain collectively with the union and issued an order against it, to cease and desist from said practice and to negotiate a collective bargaining agreement. (Appendix, p. 93.)

In the face of the non-compliance with the Board's order, the latter went to the Superior Court, San Juan Part, for said forum to enforce its order. After the necessary proceedings, the Superior Court entered the judgment which is the subject of the instant

appeal, enforcing the decision and order of the Board.

The employer (Teachers Federation) is asserting before us that the appellee court committed an error, (1) "by confirming and enforcing a decision of the Labor Relations Board issued without jurisdiction, by finding petitioner guilty of an unlawful practice and ordering it to bargain with a group of employees who are excluded from the law" and (2) "by enforcing an order of the Board which is contrary to public and national [sic, federal] labor policy, as the field is occupied by the National Labor Relations Act".

In its argument, petitioner states that because of the close relationship between the two assertions of error, it shall discuss them jointly. (Writ of certiorari, p. 9.) For the same reasons, then, we shall discuss both assertions of error jointly, it being understood

that the provisions of law concerning the controversies before our consideration are virtually identical in the local and federal jurisdictions.([2])

---

[2] In Beaunit of Puerto Rico v. J.R.T., 93 D.P.R. 509 (1966), the Court explained:

> ...it is not necessary for us to rule on the instant case if in deciding about the commission of the unlawful practice imputed, the Puerto Rico Labor Relations Board must apply federal or local labor law, for as to the specific point we are considering, both agree... Id., at p. 513.

- I -

The employer contends that the Labor Relations Board lacks the authority to order it to bargain collectively with the union, since the Labor Relations Act, already cited, expressly provides, in its Art. 4 (29 L.P.R.A. sec. 65), the following:

> The employees are entitled, among other things, to organize among themselves; to constitute, affiliate with or assist labor organizations; to bargain collectively through representatives of their choosing; and to engage in concerted activities aimed at collective bargaining or some other purpose of mutual assistance or protection. (Emphasis supplied.)

For its part, Art. 2 of the aforecited law, 29 L.P.R.A. sec. 63, provides in its pertinent part:

> The term "employee" shall include any employee, and shall not be limited to the employees of one employer in particular, unless the law explicitly provides otherwise, and shall include any individual whose work has ceased as a consequence of, or in relation to, any labor dispute, or owing to any unlawful labor practice, but shall not include any individual employed by his/her parents or spouse. The term shall not include executives or supervisors. (Emphasis supplied).

Petitioner alleges that, in accordance with the functions performed by its employees

who are organizers, they are not included in the foregoing definition of employee, and that, therefore, from the start, the Board was barred from certifying the Federation of Workers as the exclusive representative of same. As a consequence of this, it was likewise barred from ordering the collective bargaining. It is their contention that the parties in a dispute may not confer jurisdiction on the Labor Relations Board through a private agreement, since their authority comes exclusively from the aforesaid Labor Relations Act.([3])

---

[3] We refer to the doctrine of "non-delegation", which forms an essential part of Administrative Law, based, in turn, on the doctrine of separation of powers. In order to uphold said doctrine, the legal rule was adopted which establishes that the authority of administrative agencies to adopt regulations, as well as to

In other words, petitioner is attempting to contest the validity of the stipulation which it itself subscribed, by alleging that, while it was with its consent, it was invalid from the start because it was prohibited by law. Petitioner is incorrect.

A very similar situation was presented in the case of F.S.E. v. J.R.T., 111 D.P.R. 505 (1981), which has not cited by either of the parties. In this case, the State Insurance Fund

---

adjudicate controversies, shall be valid only if the statute itself creating the agency contains governing criteria for the administrative agency to exercise its functions, and said agencies exercise these functions strictly in light of these criteria. See, López Vives v. Policía de P.R., 118 D.P.R. 219 (1987); Ferretería Matos, Inc. v. P. R. Tel. Co., 110 D.P.R. 153 (1980).

and the Brotherhood Union of Employees of the State Insurance Fund subscribed an Agreement of Election by Consent in which they stipulated what type of employees would constitute the suitable unit for purposes of collective bargaining. The Attorneys for the Fund helped comprise the contracting unit and, as such, were included in all the collective bargaining agreements engaged in by the parties. Subsequently, in the negotiation of one of the bargaining agreements entered into, the parties expressly recognized the final authority of the Labor Relations Board over the suitable unit by providing that: "The decision of the Board over the positions included in the suitable unit is final and not subject to any petitions for subsequent review and any person employed in a position similar or equivalent to those included in the unit shall likewise be included therein." Id., at p. 508.

Nevertheless, in the negotiation of the next collective bargaining agreement, the parties discussed the problem of the suitable unit and agreed that the Fund would hire specialists on the subject in order for a scientific study of personnel to be conducted, the exception being made that under no circumstances would the classification or rights of the union members be adversely affected. In addition to this, the parties subscribed a stipulation to the following effect: "The Union agrees that if in future evidence is submitted to it demonstrating that an attorney included in the suitable unit performs work of a managerial nature, said case shall be submitted for consideration to the Grievance Committee for its final decision. Said decision shall be definitive and obligatory for both parties." Id., at p. 509.

Notwithstanding the foregoing, the President of the Brotherhood subsequently petitioned the administrator of the Fund for the attorneys assigned to a particular section of the Fund to be excluded from the suitable unit, because he felt that they were participating and setting administrative policy and were making decisions that, in his judgment, placed them in the managerial category. The matter was submitted to the aforesaid Grievance Committee to determine whether the former were performing managerial functions. Once the Committee began working on the matter, the Fund and the Brotherhood subscribed to a stipulation in which they declared that the functions of the aforesaid attorneys were without doubt managerial and petitioned the Grievance Committee to decree their exclusion. In view of the foregoing, the Committee decreed the requested exclusion.

The excluded attorneys, after requesting the intervention of the President of the Brotherhood, turned to the Labor Relations Board, alleging unlawful practices on the part of the Brotherhood and the Fund for violating their duty of fair and impartial representation (the excluded attorneys had no participation at all in the proceedings described above) and for violation of the terms of the collective bargaining agreement, respectively. The process culminated in the declaration that the accused had committed unlawful labor practices, for which reason an order was issued for the attorneys to be kept in the suitable unit until such time as a petition for clarification of suitable unit pursuant to what was agreed to originally in the first collective bargaining agreement were channelled <u>through the Board</u>, and not the Grievance Committee.

The Supreme Court confirmed the order issued by the Labor Relations Board and stated, at p. 515:

> The parties expressly recognized this jurisdiction of the Board when they subscribed the "Agreement for Election by Consent", to which we have made reference previously, which included the attorneys of the suitable unit. They could not ignore what they had expressly agreed to ... The ruling in J.R.T. v. Manhattan Taxi Cabs Corp., 92 D.P.R. 436 (1965) is applicable, to the effect that an Agree-ment for Election by Consent prohibits the employer from later questioning the manner in which the unit is

> made up, because otherwise it would permit the parties to deliberately ignore what had been agreed to in a mandatory agreement, would open the way for subterfuges to hinder and delay the controversies over representa-tion and would tend to defeat, rather than promote, the purposes of the Labor Relations Act. (Emphasis supplied.)

What is more, at page 517, the Court stated:

> We must keep in mind that throughout the history of collective bargaining in this case the attorneys carried out the same tasks and performed the same functions. From the point at which the suitable unit was stipulated in the

> Election by Consent Agreement, to which we referred at the beginning of this opinion, until today, there has been no variation at all in the tasks which the attorneys for the fund carry out nor modification in the functions which could reasonably serve as grounds for the Brotherhood to request their exclusion from the contracting unit.

In like manner, we have seen that in the case at bar the parties subscribed an agreement wherein, in the first clause, the representative authority of the Federation was unconditionally recognized, its work and functions taken into account at the time of stipulating to said agreement. It is important to emphasize that there is no indication in the allegations that the functions and duties of the organizers have differed in any way from the time of said

stipulation until the filing of this appeal. It is evident from a simple reading of the aforesaid stipulation that the recognition of the Puerto Rican Federation of Workers (the union) as the exclusive representative of the organizers, was full and absolute, with which they automatically acceded to the right of same to bargain collectively.([4]) The only condition set potentially, in the second clause, was that under certain circumstances both parties would waive collective bargaining. Nevertheless, we have already seen that no agreement was ever reached with regard to these conditions.

It is essential to distinguish between the effects of the first and second clauses in the Stipulation Document. Petitioner holds that the fact that the circumstances were conditioned on collective bargaining implies that the

---

[4] Labor Relations Act, already cited, Art. 4 (29 L.P.R.A. sec. 65).

Federation was not recognized as the exclusive representative of the organizers. Petitioner is wrong. Both clauses each carry their own force.

The first clause shows no condition at all to limit the recognition rendered by the employee but rather, its own language makes its unconditionality quite clear. Once this recognition was made it was then that the parties agreed that, under certain conditions, the union would waive its right to bargain collectively. It should be noted that the language used in the second clause implicitly recognized that from the start, the union shall be entitled to bargain collectively, and that it should <u>waive</u> such a right. This is so because one can only waive what one has previously been entitled to.([5])

---

[5] For the same reason that one cannot waive heirdom without the death of the one's predecessor in title, Civil Code

Moreover, it has already been established that when the terms of a collective bargaining agreement "are clear and leave no space for doubt concerning the intention of the contracting parties,...one must go by the literal sense thereof, as provided by the present Civil Code, Art. 1233, 31 L.P.R.A. sec.

---

Arts. 603 and 744, 31 L.P.R.A. secs. 2085 and 2370, nor obtain a divorce based on events which took place prior to the date on which the marriage took place. Cf., Rosado v. Rivera, 81 D.P.R. 158 (1959).

3471".([6]) Luce & Co. v. Junta Rel. Trabajo, 86 D.P.R. 425, 433-34 (1962).

It is essential for the Commonwealth of Puerto Rico's public policy, as it regards the relations between employers and employees, to foster maximum production through industrial

---

[6] The article cited reads:

> If the terms of a contract are clear and leave no room for doubt concerning the intention of the contracting parties, one shall go by the literal sense of its clauses.
> If the words appear to be contrary to the obvious intention of the contracting parties, the latter shall prevail over the former.

peace, which in turn is obtained through agreements among the parties and collective bargaining. Part of the implementation of these objectives means not promoting strikes or dissention in labor-management relations, but rather facilitating same within a climate of mutual respect and reciprocal recognition of their essential productive interdependence. S.I.U. de P.R. v. Otis Elevator Co., 105 D.P.R. 832 (1977); Labor Relations Act, already cited (29 L.P.R.A. sec. 62).

In J.R.T. v. A.C.A.A., 107 D.P.R. 84, 91 (1978), the Supreme Court, citing a decision of the Labor Relations Board, stated:

> The public policy expressed by the legislature of Puerto Rico in our Act underlines the necessity of promoting collective bargaining as an effective instrument with which to achieve

industrial peace. We feel that the solution through mutual agreement by the parties, of disputes which may arise as a consequence of the application of a collective bargaining agreement, is highly desirable. Such measures may be conceived as the culmination of the process of collective bargaining. Its adoption and application eliminates *[sic]* friction and conflicts which generally affect the relations of the parties and consequently industrial peace. To encourage such practices is, in reality, to stimulate collective bargaining. It must be considered, moreover, that when the parties incorporate measures of this nature in an agreement, they have selected the method which in their judgment is most

> appropriate for resolving the controversies which may arise in light of the contract. Such agreements must be respected. For those reasons, this Board, in compliance with legislative purpose, does not generally hear cases of violation of agreement when the parties have not exhausted the remedies which the same offer for the solution of such problems...

In this respect, see, in addition, Pagán v. Fund. Hosp. Dr. Pila, 114 D.P.R. 224 (1983).

The Labor Relations Board, just as petitioner employer propounds, is certainly a creature of the Labor Relations Act and, as such, is limited to the powers which that same law confers upon it. The aforecited Art. 5 of said act (29 L.P.R.A. sec. 66), limits the Board, upon determining what a suitable unit

consists of, to making such a determination only with individuals who can be categorized as employees in accordance with the provisions of same.([7]) Said article does not include any provision that would allow the unionization of individuals who can be categorized as managerial.([8]) Nevertheless, it should be noted

---

[7] Labor Relations Act, cited above, Art. 2, 29 L.P.R.A. sec. 63(3); see p. 5, supra.

[8] Labor Relations Act, cited above, Art. 2, 29 L.P.R.A. sec. 63(2):

> The term "employer" shall include executives, supervisors,

(continued...)

[8](...continued)

that nothing in the law prohibits the waiving of said procedure and election requirements by stipulation of the parties.([9])

---

employing party in any labor dispute or collective bargaining.

[9] The National Labor Relations Act, 5 U.S.C. sec. 7101, et. seq., sets forth the basic procedural requirements governing the recognition and certification of unions by the National Labor Relations Board, which are identical to the procedural requirements provided in the aforenamed Labor Relations Act of Puerto Rico.

In 5 U.S.C. sec. 7111(g), of the same [U.S.] National Act, it provides *[English text cited]*:

Nothing in this section shall be construed to prohibit the waiving

The directives and limitations provided by law for certification processes, by virtue of a balance of interests between the employer and the employees, are applicable when it is the Board itself which is to determine whether the group in question may be considered a suitable unit. Nevertheless, when it is the parties, through agreement, which determine that a particular group must organize in order to become an exclusive representative, the Board, by virtue of the agreement made, and advancing the public policy that lays the foundation for the Labor Relations Act itself, may issue certification to that effect by basing itself exclusively on said agreement and, in so doing,

---

of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules or decisions of the Authority.

shall not be violating the power which is conferred upon it by our Act or the Federal act. This procedure and settlement, both by the parties in subscribing agreements muto proprio, and by the Board in respecting same, is consonant and desirable, according to the objectives and public policy promoted by the Act. Pagán v. Fund. Hosp. Dr. Pila, cited above.

On the other hand, it has already been established that "the Board has ample discretion to determine, on a flexible and functional basis, what constitutes a suitable negotiating unit. The Board takes into consideration such issues as (1) the incentive of collective bargaining; (2) the history of collective bargaining in the business of the specific employer and the industry in its entirety; (3) [the] integration of the processes of labor and administration; (4) [the] abilities of the

employees involved; and (5) the employees' wishes. And the Board's determination concerning what is the suitable negotiating unit is conclusive and shall be confirmed when presented to us in the appropriate case, unless such decision is arbitrary or capricious." (Internal quotes omitted, emphasis supplied.) Rivera v. Junta Relaciones del Trabajo, 70 D.P.R. 5, 12 (1949). See, also, J.R.T. v. A.M.A., 119 D.P.R. 94 (1987); J.R.T. v. Asoc. C. Playa Azul I, 117 D.P.R. 20 (1986); J.R.T. v. Marex Construction Co., Inc., 103 D.P.R. 135 (1974).

From the above, then, it is obvious that the Board could not have acted arbitrarily or capriciously, or outside the jurisdictional powers conferred upon it by the Act, since it never made any determination concerning the adequacy of the constitution of the group of organizers as a suitable unit. It is evident

that it never exercised the discretional power it was given to evaluate the circum-stances of the case on their merits. The Board merely approved an agreement subscribed by the parties on the basis of which it certified the Puerto Rican Federation of Workers as the exclusive representative of the workers in question. It never became necessary to determine if, in effect, the group of organizers constituted a suitable unit, because both parties waived this by stipulation.([10])

---

[10] In Negrón Rivera v. Bonilla, Ex parte, 120 D.P.R. 61 (1987), the Supreme Court ruled that when a stipulation puts an end to a lawsuit, as in the case at bar, said stipulation shall constitute a settlement agreement. In that regard, it is already well established by case law that any settlement agreement has the effect of res judicata, even though it

Moreover, the doctrine of one's own acts, established in Puerto Rico jurisprudentially, is applicable.([11]) In light of this doctrine, the

---

does not so state. Negrón & Bonilla, Ex parte, cited above; Sucn. Román v. Shelga Corp., 111 D.P.R. 782 (1981).

[11] The Supreme Court has determined that the application of this doctrine shall not be limited to contracts, but rather shall permeate our entire Law. General Electric v. Concrete Builders, 104 D.P.R. 871 (1976); Velilla v. Pueblo Supermarkets, Inc., 111 D.P.R. 585 (1981); Int. General Electric v. Concrete Builders, 104 D.P.R. 871 (1976); Lausell Marxuach v. Díaz de Yáñez, 103 D.P.R. 533 (1975); Berríos v. U.P.R., 116 D.P.R. 88 (1985). For it to be applied, the following requirements must be met:

1. specific behavior

employer is prohibited from collaterally attacking the subscribed stipulation. The purpose of this doctrine is to prevent unjust enrichment and to eliminate contradictory behavior which violates the good faith that must permeate all legal mandates.([12])

---

declared invalid, the union's rights would be prejudiced. We already established as well, that respecting the covenants and agreements reached by the parties sustain and advance *[sic]* the Government's public policy with regard to labor-management relations.

[12] Even unilateral declarations of will may propitiate states

(continued...)

[12](...continued)

In the case at bar, the challenge to the validity of the stipulation subscribed by the parties constitutes a frivolous act, lacking in good faith, since it apparently arises from a capricious impulse on the part of the petitioner when it regretted the recognition it made after

---

has to produce effects must be resolved --as with all juridical problems-- as criteria of juridical policy which in this case are those which advise protection of said trust.
José Puig Brutaru, Fundamentos de Derecho Civil [Principles of Civil Law], 2nd ed., Barcelona, Bosch, Casa Editorial S.A., Tome I, Vol. II, 1973, p. 56.

the latter had been formalized and, apparently, when it realized the legal effect thereof.

- II -

Nevertheless, it is interesting to note, without granting that said analysis was necessary, that, even if the functions performed by the group of employees in controversy had been evaluated, for purposes of determining the suitable unit, it is not so evident, as petitioner asserts, that they could have been considered as managerial.

The functions which this group performs are the following:

(1) it enforces the rules, strategies and policies of the Teachers Federation.

(2) it develops, plans and recommends a work plan for its

area, in accordance with the problems and needs of the teachers within the assigned area;

(3) its central function is to recruit, organize and affiliate teachers to the Teachers Federation which functions as a labor union;

(4) it represents the Teachers Federation in its area, receives and processes complaints and grievances;

(5) it gives trainings, organizes and directs meetings;

(6) it prepares and distributes written materials;

(7) it visits schools, meets with teachers, school principals and superintendents of schools

for discussion and solution of problems;

(8) it participates in meetings of the Department of Organization and Development to set strategies and policies to be followed by the Teachers Federation throughout the Island;

(9) it organizes, directs, supervises and acts as a liaison with volunteers, union locals (one for each school district);

(10) it is an active, voting member at the assemblies of the Teachers Federation, participates in decision-making of said Federation and

elects the Board of Directors; and

(11) it is an employee of the Department of Public Instruction (now Education), union licensed to render temporary services to the Teachers Federation.

(Writ of certiorari, pp. 6-7.)

Appellant holds that these functions clearly show that these employees are managerial. We differ with petitioner.

From an analysis of the actual scope of said functions, we cannot conclude that the organizers make decisions based on their independent judgment nor that through same they establish the public policy of the Teachers Federation.([13])

---

[13] The National Labor Relations Act, 5 U.S.C. sec. 7103(a)(10), defines what

In relation to the constitution of the suitable unit, it has been said [*English text cited*]:

> Unit status depends upon actual duties performed rather than titles. Current duties are examined. To qualify an individual as a supervisor, the exercise of independent supervisory functions should be consistent. But not all supervisory functions must be exercised for the employee to be deemed a supervisor. For example, a food activity foreman who effectively recommended the selection of applicants on several occasions and effectively recommend *[sic]* the selection of applicants on several occasions and

---

> individuals who devote a preponderance of their employment time to exercising such authority.

> assignment of work, was routine in nature *[sic]*.

Peter B. Broida, A Guide to Federal Labor Relations Authority Law & Practice, Dewey Publications Inc. 1991, available in WESTLAW, FLRAG, CH.2,I,A, p. 35 (internal quotes omitted).

Hence, receiving and processing complaints and grievances, meeting with teachers for problem solving, participating in Federation meetings to establish strategies and to have the right to vote in the election of the Board of Directors, given their status as members[14], does not imply that the organizers have the authority to establish the public policy of the Teachers

---

[14] Petitioner asserts that the aforesaid functions demonstrate the managerial function of the aforenamed employees.

Federation nor that they exercise independent judgment, wherefore, even though closely related to the "management" of the Teachers Federation, they are not a part thereof.

Another of the fundamental elements for ruling on whether a person is an employee or not within the scope of the Labor Relations Act is the financial position he or she is in with the alleged employer, that is, the economic reality between the parties shall prevail over technical-legal classifications which may be made regarding the positions which said persons occupy. Landrón v. J.R.T., 87 D.P.R. 94 (1963).

In this regard, moreover, in the Federal jurisdiction various types of positions and functions have been evaluated and, on the basis thereof, their classification as managerial or employee has been determined for purposes of the suitable unit. To wit *[English text cited]*:

Work or Team Leaders - Work leaders are not super-visors when their responsibility is that of a leadman or more senior and experienced employee vis-a-vis junior and less experienced employees. They have none of the usual indicia of supervisory authority. They take instructions from their supervisors and pass them along to other employees on the job, draw equipment and distribute it and tasks to the other employees, they work alongside the other employees and they report work progress to the supervisors... Restated, a team leader is not a supervisor if he has routine responsibility for assigning work and directing work of a subordinate, but his relationship to the subor-dinate is that of a senior employee to a junior, so that as equal members of the team they discuss each task to be done and plan a

course of action. Emplo-yees were not supervisors or managers who as team leaders routinely assigned work and became involved in the clerical aspects of leave administration and per-formance evaluation, but who exercised no consistent independent judgment. These unit employees included a Maintenance Management Specialist, Supply Systems Analyst and General Engineers... But team leaders may be supervisors...because their work involve[s] inde-pendent judgement requiring assessment of the tech-nical nature of the work being assigned to team members, and requiring relative to assignments an assessment of the expertise and qualifications of team members:

[T]he Authority has found that employees who consistently exercise

independent judgement in assignment of work, as distinguished from performing duties that are only routine in nature, are supervisors...Additionally, the Authority has found employees to be supervisors where it was shown that they consistently exercise independent judgment as to the direction or review of other employees' work...

Inspection positions - Airspace System Inspection Pilots are not supervisors: they do not assign work, recommend promotions or transfers; occasional approval or overtime for crew members is routine in nature.

Researchers - For example, an individual was held not to be a manager under the army ADP case because he was a professional whose actions assisted in implementing rather than in shaping the Activity's policies. Army ADP has been further defined to mean that performance of duties as an expert or professional redenring *[sic]* resource information or recommendations as to policies would not justify classification as a management official; there must be a finding that duties and responsibilities involved extend to the point of active participation in the ultimate determination of what policy will be.

Expert Advisors - Under Dept. of Interior, Fish and Wildlife Service, Patuxent Wildlife Research Center and

> AFGE, 7 FLRA 643 (1982), employees were not managers who served as experts or professionals rendering resource information relation *[sic]* to agency policies, specifically, national hunting regulations. They did not come to independent decisions as to what agency policy would be or what recommendations would be made to the agency regulations committee. Those recommendations were formed through discussions between the employees and their supervisors...

Broida, op. cit., pp. 49, 54, 57 and 59 (internal quotes omitted).

After an analysis of the above, which, in our judgment, for the most part encompass the functions which in effect were performed by the organizers of the Teachers Federation in the case at bar, we conclude that even if the case had been heard on its merits, the group of

organizers would probably have been deemed a suitable unit.

Nevertheless, we wish to emphasize the fact that, in the face of a stipulation subscribed by the parties wherein the representative status of the appellee is unconditionally recognized, the Board did not have to evaluate the composition of the union unit to proceed to certify it. As we have already found, by subscribing said stipulation, both parties waived the presentation of evidence to that effect. We therefore conclude that the Labor Relations Board acted reasonably and in consonance with the Labor Relations Act by certifying the Puerto Rican Federation of Workers and, consequently, ordering the collective bargaining.

Pursuant to the foregoing, we rule that the illustrious sentencing court acted correctly in giving full validity and deference to the stipulation made by the parties. Petitioner is

prohibited from questioning the validity thereof, as well as the manner in which the suitable unit is made up. Otherwise the parties would be allowed to "deliberately ignore what was agreed to in an obligatory agreement". F.S.E. v. J.R.T., 111 D.P.R. at p. 515.

In the absence of any evidence to demonstrate that the Board acted with prejudice

or partiality([15]), the confirmation of the appealed sentence is proper.

- III -

In view of this case record, the appealed sentence is confirmed.

---

[15] The findings issued by the Labor Relations Board are deserving of great deference by the courts and in the absence of evidence [to show] that there was prejudice or partiality involved, shall not be altered. Labor Relations Act, cited above, 29 L.P.R.A. sec. 70; J.R.T. v. A.M.A., cited above; J.R.T. v. Marex Const. Co. Inc., cited above; Rivera v. Junta Relaciones del Trabajo, 70 D.P.R. 5 (1949).

So decreed and ordered by the Court and so certified by the Chief Clerk.

*[Signature]*

Yolanda Toyos Olascoaga

Chief Clerk

*[There is an illegible circular rubber stamp.]*

- CERTIFIED -

o be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

Supreme Court, U.S.
FILED

93 1 2 5 4 DEC 1 6 1993

OFFICE OF THE CLERK

NO. 93-

*IN THE SUPREME COURT*
*OF THE UNITED STATES*

*OCTOBER TERM, 1993*

---

*FEDERACION DE MAESTROS*
*DE PUERTO RICO*
*PETITIONER*

*V.*

*LABOR RELATIONS BOARD*
*RESPONDENT*

*PETITION FOR WRIT OF CERTIORARI*
*TO THE SUPREME COURT OF THE*
*COMMONWEALTH OF PUERTO RICO*

---

*APENDIX TO THE PETITION*
*FOR A WRIT OF CERTIORARI*

---

*ALDARONDO-GIRALD LAW OFFICES*
*LE MANS CONDOMINIUM, OFFICE #803*
*MUÑOZ RIVERA AVENUE #602*
*HATO REY PR 00918*
*(809) 766-2876*
*ATTORNEY FOR PETITIONER*

CERTIFIED TRANSLATION

EXHIBIT XV

IN THE COMMONWEALTH OF PUERTO RICO

GENERAL COURT OF JUSTICE

SUPREME COURT

| | | |
|---|---|---|
| PUERTO RICO TEACHERS FEDERATION | * | |
| Petitioner | * | Civil No. |
| Vs. | * | Certiorari |
| | * | Against |
| PUERTO RICO LABOR RELATIONS BOARD | * | Judgement Entered by |
| | * | the |
| Defendant | * | Honorable |
| - - - - - - - - - - - - - - - - - | * | Court of Appeals |

WRIT OF CERTIORARI

*[A filing stamp reads: 1993 JUN - 4 PM 4:39 / FILED / CLERK'S OFFICE / PR SUPREME COURT]*

GODWIN ALDARONDO GIRALD

BAR ASSOCIATION MEMBER NO. 7486

LE MANS CONDOMINIUM SUITE 803

602 MUÑOZ RIVERA AVENUE

HATO REY PUERTO RICO 00918

TELS. 766-2876; 767-1685

FAX: 751-9832

LETICIA RODRIGUEZ GARCIA

JUAN A. NAVARRO SALGADO

SHIRLEY MONGE GARCIA

LEGAL DIVISION ATTORNEYS

PUERTO RICO LABOR RELATIONS BOARD

P.O. BOX 14427

BARRIO OBRERO STATION

SANTURCE PUERTO RICO 00916

TEL. 765-3535

BAR ASSOCIATION MEMBER NO. 7228

- CERTIFIED -

o be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

EXHIBIT XVII

**CERTIFIED TRANSLATION**

IN THE COMMONWEALTH OF PUERTO RICO

GENERAL COURT OF JUSTICE

SUPREME COURT

| | | |
|---|---|---|
| PUERTO RICO TEACHERS FEDERATION | * | |
| PETITIONER | * | CIVIL NO. |
| VS. | * | IN RE: WRIT OF CERTIORARI AGAINST |
| PUERTO RICO LABOR RELATIONS BOARD | * | JUDGEMENT ENTERED BY THE HONORABLE COURT OF APPEALS |
| DEFENDANT | * | |

- - - - - - - - - - - *

CERTIORARI

TO THE HONORABLE COURT:

Comes now the Puerto Rico Teachers Federation represented by the undersigned

counsel and very respectfully submits the instant writ of certiorari.

I. JURISDICTION OF THIS HONORABLE COURT:

This Honorable Court has jurisdiction to hear the instant writ of certiorari pursuant to Act No. 21 of July 13, 1992; and Article 671 of the Civil Trial Code (32 L.P.R.A. Sec. 3492).

II. INTRODUCTION:

Petitioner herein, Puerto Rico Teachers Federation, prays that the Judgment of April 30, 1993 entered by the Court of Appeals, in Civil Case No.: SNCE 93-0034, Puerto Rico Labor Relations Board Vs. Puerto Rico Teachers Federation, be set aside. Said Judgment, noticed on May 5, 1993, denied the writ of certiorari filed against the Judgment of the Superior Court in Case No. KAC 92-0397 between the same parties. In said Judgment, the Teachers Federation was ordered to bargain

collectively with a Union composed of general employees/and or employees of trust, in violation of the Federal Labor Relations Act, and the Puerto Rico Labor Relations Act.

III. ACCOUNT OF FACTS

1. Petitioner Puerto Rico Teachers Federation is a bona fide organization created under Act No. 134 of July 19, 1960 (3 L.P.R.A. Sec. 702) which encompasses some twelve thousand (12,000) classroom teachers of the Education System. It is recognized by the Department of Education and the Labor Department and is authorized to associate, organize and represent teachers.

2. The objectives of the Puerto Rico Teachers Federation, pursuant to its Constitution and By-Laws are, among others, the following: (a) To foster measures aimed at achieving full separation of the educational system from party politics as an element which assists in offering an education

of excellence, (b) to represent its members so that through collective bargaining and the union struggle it may provide them with effective protection and win higher degrees of social, labor, professional and economic conditions; (c) to act as the teacher's representative at all times in the face of any aggression by the employer and its followers. (d) to promote the teaching of trade unionism at all school levels, as a safeguard of the democratic and constitutional right of workers to organize and negotiate collective bargaining agreements. (e) to succeed in extending to the public employees of Puerto Rico collective bargaining, the right to strike, to picket and other lawful concerted activities, (f) to achieve union unity of teachers.

3. In order to realize the above objectives, the Puerto Rico Teachers

Federation has an Executive Committee composed of fifteen (15) persons:

a. President

b. Vice-President

c. Secretary - Treasurer

d. Secretary of Curriculum & Propaganda

e. Seven (7) Regional Representatives

4. The Teachers Federation has ten (10) Regional Representatives throughout the Island of Puerto Rico. The functions and duties, among others, of each representative is as follows: (a) To carry out the organizational policy of the Teachers Federation; (b) to organize the teachers in their work center (schools); (c) to recruit new Federation members; (d) to present and discuss grievances and cases before the School Principal or representative of the Department of Education; (e) to

maintain close contact and coordination with the Director of the Federation's Department of Organization and Development; (f) to participate in the meetings of the governing bodies of the Federation; (g) to have the right to challenge and revoke, through assemblies or meetings, the decisions of the President or Administrator of the Federation; (h) to belong to the Executive Committee, the Board of Directors, the Delegate Assembly and the General Assembly, which are the organisms that direct all Federation affairs.

5. The Regional Representatives, known in 1988 as "Organizers" petitioned to become unionized under the name of "Puerto Rican Federation of Workers".

6. On July 1, 1988, the "Puerto Rican Federation of Workers" filed a petition with the Labor Relations Board for representative investigation and certification, in which it alleged that a controversy had arisen

concerning the representation of all the organization and development representatives utilized by the Puerto Rico Teachers Federation.

7. On August 23, 1988, the Teachers Federation informed the Labor Relations Board that it did not recognize the Puerto Rican Federation of Workers as a contracting unit **because it was intimately connected to management and because they were employees of trust.**

8. The Labor Relations Board, in connection with the petition, ordered the holding of elections.

9. On October 13, 1988 said election, in which the Union was favored, was held.

10. On March 8, 1989, the Labor Relations Board scheduled a hearing to resolve the refusal to bargain and to recognize the Union.

11. On March 8, 1989, at the start of the aforesaid hearing, the Teachers Federation and the Union informed the examining official that they had subscribed the following stipulation.

STIPULATION

COME NOW the above-captioned parties, who report the following agreements and stipulations:

1. The Puerto Rico Teachers Federation recognizes the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for the purposes defined in Act 130 Puerto Rico Labor Relations Board, of May 9, 1945, and

according to the Board itself, it was established on September 16, 1988, by resolution.

2. The Puerto Rican Federation of Workers and the contracting Unit of the organizers pledge not to exercise their right to collective bargaining in representation of the organizers, as long as certain conditions obtain, which are to be established between the parties on or before March 20, 1989, by making the maximum effort to achieve same.

3. As part of the agreements, the Puerto Rican Federation of Workers shall withdraw the charges pending before the Labor Relations board once the aforesaid conditions are established.

4. So agree the parties, having signed this document.

In San Juan, Puerto Rico, this 8th day of March, 1989.

| | |
|---|---|
| RAMON FUENTES | RENAN SOTO SOTO |
| President Puerto Rican Federation of Workers | President Puerto Rico Teachers Federation |

12. On the basis of said stipulation, the Labor Relations Board, on May 28, 1989, issued [a] "Decision and Certification" in which it recognized the Puerto Rican Federation of Workers as the exclusive represented *[sic]* of the contracting unit. It proceeded to close and file the case on representation.

13. Subsequently, the Union, contrary to the stipulation, required the Teachers Federation to subscribe certain agreements

which for all purposes, are equivalent to negotiating a Collective Bargaining Agreement. The Teachers Federation, relying on the stipulation, refused.

14. On June 21, 1989, in the face of the Teachers Federation's refusal to negotiate, the Union filed a charge against it with the Labor Relations Board.

15. On June 13, 1990, the Examining Official designated by the Labor Relations Board submitted a report in which she recommended the dismissal of the complaint, as she considered that both the Teachers Federation and the Federation of Workers were liable for the unlawful practice imputed. (Exhibit II)

16. On October 31, 1991, the Labor Relations Board issued a Decision and Order, in which it adopted the findings of fact and analysis through page 14 of the Report of the Examining Official. Nevertheless, relying on

the stipulation, it concluded as an issue of law that the Teachers Federation had recognized the Union, [and] ordered the Teachers Federation to bargain collectively with the Union. (Exhibit III).

17. On November 20, 1991, the Teachers Federation submitted a Motion for Reconsideration before the Labor Relations Board. In said writ the herein appellant party reiterated that the members of the Union are intimately linked with management. (Exhibit IV)

18. On December 10, 1991, the Labor Relations Board denied the Motion for Reconsideration filed. (Exhibit V).

19. On March 5, 1992, the [Labor] Relations Board ordered the Teachers Federation to negotiate a collective bargaining agreement with the Union.

20. On July 16, 1992, the Labor Relations Board submitted a petition before

the San Juan Superior Court to enforce the order of March 5, 1992. (Exhibit VI)

21. On September 24, 1992, the Teachers Federation submitted a motion in opposition to the aforenamed petition. (Exhibit VII)

22. On November 13, 1992, the [Labor] Relations Board submitted a reply to the opposition submitted by the herein appellant. (Exhibit VII)

23. On December 2, 1992, the Honorable Superior Court granted the petition of the Labor Relations Board. (Exhibit IX)

24. On December 23, 1992, the Teachers Federation submitted a motion for reconsideration. Which motion was subsequently denied.

25. On January 22, 1993, the Teachers Federation submitted a writ of certiorari before the Honorable Court of Appeals. (Exhibit X)

26. On February 1, 1993, the Labor Relations Board submitted a memorandum in opposition to the issuance of the writ of certiorari. (Exhibit XI)

27. On April 30, 1993, following a series of procedural incidents, the Honorable Court of Appeals denied the writ of certiorari filed. A copy of said Judgment was placed in the case file on May 5, 1993. (Exhibit XII)

**IV. ERRORS OF LAW ASSERTED**

1. THE HONORABLE COURT OF APPEALS ERRED IN LEAVING IN FORCE AN ORDER OF THE PUERTO RICO LABOR RELATIONS BOARD WHICH CERTIFIES A UNION OF FUNCTIONARIES EXCLUDED FROM THE LAW IN VIOLATION OF: (1) PUBLIC POLICY: (2) THE PUERTO RICO LABOR RELATIONS ACT; THE FEDERAL LABOR RELATIONS ACT.

**2. THE HONORABLE COURT OF APPEALS ERRED IN VALIDATING AN ORDER WHICH DENIES APPELLANT THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW**

**BY DISALLOWING IT FROM PRESENTING EVIDENCE ON THE CHARACTER OF MANAGERIAL EMPLOYEES AND/OR [EMPLOYEES OF] TRUST OF THE UNION MEMBERS.**

3. THE HONORABLE COURT OF APPEALS ERRED IN LENDING VALIDITY TO A STIPULATION WHICH IS NULL AND CONTRARY TO THE LOCAL AND FEDERAL LABOR RELATIONS ACT.

## V. ARGUMENT OF THE ERRORS OF LAW ASSERTED

1. THE HONORABLE COURT OF APPEALS ERRED IN LEAVING IN FORCE AN ORDER OF THE PUERTO RICO LABOR RELATIONS BOARD WHICH CERTIFIES A UNION OF FUNCTIONARIES EXCLUDED FROM THE LAW IN VIOLATION OF: (1) PUBLIC POLICY: (2) THE PUERTO RICO LABOR RELATIONS ACT; AND THE FEDERAL LABOR RELATIONS ACT.

Pursuant to the: (1) Labor Relations Act, (2) the decisions of the United States Supreme Court, (3) the Puerto Rico Supreme Court and (4) the Honorable Labor Relations Board,

employees who are intimately linked to management, supervisors and [employees] of trust are excluded from the Labor Relations Act. To that effect the Puerto Rico Labor Relations Act in its Article 2 defines the term employer:

> "The term **employer** shall include **executives**, supervisors and **any person who performs activities of an executive nature in the interest of an employer, directly or indirectly,** but shall not include, except in the case of the corporate instrumentalities of the Government of Puerto Rico, as defined below, the government or any political subdivision thereof; provided that it shall include, moreover, any individual, partnership or organization which intervenes in favor of the employing party in any

labor dispute or collective bargaining".

In the present case the Organizers are partners (equivalent to shareholders) of the non-profit organization known as the Puerto Rico Teachers Federation, they pay dues, vote in its elections, may run for elective offices, are entitled to challenge and revoke, through the assemblies, or meetings, the decisions of the President or the Administrator of the Federation functionary *[sic]* named thereby. As representatives of their Region, they belong to the Executive Committee, to the Board of Directors, to the Delegate Assembly and the General Assembly which are the organisms which direct all the affairs of the Federation. The Executive Committee is the supreme authority when the Board of Directors is not in session. The Executive Committee is the organism in charge of formulating the wage policy to be submitted

to the Board of Directors and directs the day to day operations of the Federation and takes part in and passes judgment on the negotiation of collective bargaining agreements. For illustrative purposes only a copy is included of the minutes of the Executive Committee dated January 29, 1989, January 23, 1989; December 29, 1989; January 13, 1990, February 3, 1990 and December 3, 1990 (the latter one handwritten.) (Exhibit XIII)[1]

In the case at bar the exclusion of the Organizers - (Regional Representatives) from the Suitable Unit is justified because they play a role, among other things, in the solution of claims and the fixing of wages.

The law, in defining the term "employee", states that:

---

[1] Of fifteen members who comprise the Executive Committee, seven belong to the Union.

> "it shall include any employee and shall not be limited to the employees of one employer in particular..., but shall not include any indivi-dual employed by his/her parents or spouse. The term **shall not include executives or supervisors.**

Executives and supervisors are expressly excluded since said terms are included in the term "employer". See also, JRT v. Acevedo, 78 DPR 540 (1955).

Pursuant to Article 4 of the Puerto Rico Labor Relations Act (29 LPRA 65) only those who are **employees** shall be entitled to form labor unions, as defined above. The Board, pursuant to Article 5 (sec. 66) is authorized to certify a union of executive (managerial) employees or supervisors. Since the Organizers are not employees of the board, it lacks jurisdiction to enter an order requiring

the Federation to recognize and negotiate a collective bargaining agreement with said functionaries. JRM v. JRT, 108 DPR 448 (1979); Leedom v. Kyne, 358 US 184 (1984).

It is crucial in any case of certification of a suitable unit to determine if the positions to be included are supervisory and/or executive or not. **The Board cannot establish a contracting unit constituted by supervisors or executives nor require that a collective bargaining agreement be negotiated with this unit.** This would be an act ultra vires. Nor may a group of supervisors or executives invoke the protection of the law nor file charges of unlawful practice of refusal to bargain because it does not have that right. See NLRB v. Intercity Advertising Co. 190 F2d. 420 (1951); NLRB v. Talladega Cotton, 213 F2d. 209 (1954); JRT v. Acevedo, 78 DPR 540 (1955).

Beyond the clear provisions of the Law, casuistry has recognized other groups which must be excluded from the right to negotiate.

a) **Managerial Employees,** those whose interests are intimately linked to those of management or who formulate, determine and effect managerial policy. These employees lack any right to organize in labor unions or demand to negotiate an agreement. The United States Supreme Court has so ruled in NLRB v. Bell Aerospace, 416 US 267 (1974) and reiterated in Yeshiva University v. NLRB, 444 US 672 (1980). NLRB v. Textron Inc., 416 US 267, 85 LRRM 2945 (1975).

In Yeshiva, supra, the United States Supreme Court stated *[English text cited]*:

> "Managerial employees must excercise *[sic]* discretion with or even independently of established employer policy and must aligned *[sic]* with managment *[sic]*...normaly

> *[sic]* an employee may be excused as managerial only if he represents managment *[sic]* interest by taking or recommending discretionary actions that effectively control or implement employer policy...

Employees identified with management have been repeat-edly and consistently excluded from the suitable unit by the Puerto Rico Labor Relations Board because they are managerial employees. See, Autoridad de las Fuentes Fluviales D-465; Autoridad de Energía Eléctrica, PC-84, D-900.

In Compañía de Turismo de Puerto Rico, Dec. 814 (1980), the Board, consistent with the pronouncements of the United States Supreme Court and the National Board stated in such cases that the concept of "intimately linked to management" presupposes an "alignment of ideas, interests and attitudes" between the employee who formulates or

determines administrative and managerial policy and norms of the employer.

The National Labor Relations Board was the one that initially established this exception, see Palace Laundry Dry Cleaning Corp. 75 NLRB 320, 21 LRRM 1039 (1947). In fact, within this category of employees are included those whose work is to make purchases for the employer and who in relation to this work compromise the employer's credit. See, Kearney and Trecker Corp. 121 NLRB 817, 42 LRRM 1450 (1958); Mark Trucks Inc., 116 NLRB 1576, 39 LRRM 1048 (1956). Also excluded from the coverage of the law have been employees who in the eyes of the public are considered the president's "right-hand man". See, EDP Computer Systems, 284 NLRB 117, 128 LRRM 1056.

In the instant case, the Organizers - Regional Representatives - are not only lined up with the employer's policies, they are the ones who formulate the organization's policy.

b. **CONFIDENTIAL EMPLOYEE:** under the term "confi-dential" employee, the United States Supreme Court has excluded from the Federal Labor Relations Act employees who have a connection with labor matters - those who assist and act in a confidential capacity for persons who formulate, determine or enforce managerial policy in the field of labor relations and those who because of their work regularly have access to confidential information on anticipated changes resulting from collective negotiating. See NLRB v. Hendricks County, 454 US 170, 108 LRRM 3105 (1981).

The employee of trust is one who acts in a confidential capacity towards a person who formulates, determines and carries out the company's labor policy. What makes it confidential is the access to confidential information relating to labor-management affairs. See NLRB v. Hendricks, 454 US 170

(1981); Washington Electric Corp. v. NLRB, 398 F2d. 669 (1968); Bell Aerospace, supra.

This interpretation has been adapted also by the National Labor Relations Board. See B.F. Goodrich, 115 NLRB 722 (1956); I.T.T. Grinnell, 212 NLRB 105 (1974); and the Puerto Rico Labor Relations Board, see Autoridad de las Fuentes Fluviales, Dec. 465 (1968); Autoridad de Acueductos y Alcantarillados, Dec. 510 (1909) and Fondo del Seguro del Estado, Dec. 565 (1970); Compañía de Fomento de Turismo, Dec. 645 (1973) and Banco Gubernamental de Fomento, Dec. 594 (1972).

In the case at bar, the Organizers have direct access to information about negotiation of collective bargaining agreements, wage reviews, recruitment and dismissal of employees before said decisions are made known to others, since they participate on the Executive Committee.

Based on the foregoing, it is abundantly clear that the [Labor] Relations Board is barred from recognizing the Union.

2. **THE HONORABLE COURT OF APPEALS ERRED IN VALIDATING AN ORDER WHICH DENIES APPELLANT THE CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW BY REFUSING TO LET IT PRESENT EVIDENCE ON THE MANAGERIAL EMPLOYEES AND OR CONFIDENTIALITY OF THE UNION MEMBERS.**

The Court of Appeals has erroneously upheld an order which deeply injures the constitutional right which petitioner has to due process of law. In effect, the Labor Relations Board deprived the appearing party of the opportunity to be heard and to create a record with the testimonial and documentary evidence in its favor and thus place this Honorable Court in a position to review the Board's finding. As it is expressly shown at page eleven (11) of the Examining Official's Report, the Teachers Federation, on repeated

occasions during the hearing, prayed to be allowed to show evidence impugning the certification of the Suitable Unit and it was not permitted to do this.

The Teachers Federation was deprived of its day in court and was prevented from establishing that the certification of the Organizers in a labor union is erroneous and contrary to law. The Board, without having reviewed evidence, concludes that the Teachers Federation engaged in an unlawful labor practice in its refusal to bargain with said union. The Federation's position was to the effect that the Organizers were excluded from the Labor Relations Act. The Board refused to hear and rule on this matter. On what case file, testimony or documentary evidence does the Board rely in order to order the enforcement of its decision regarding the Organizers? How can this Honorable court pass judgment on the suitable unit?

Since the Board's decision is groundless, it cannot be enforced.

This Honorable Supreme Court has ruled that a Decision & Order of the Labor Relations Board should be set aside when said organism does not make a finding which it was duty-bound to do because this constituted the heart of the matter", Puerto Rico Telephone Co. v. Junta de Relaciones del Trabajo [Labor Relations Board], 92 DPR 257, at pages 273 and 274.

In the instant case, the essential controversy of whether or not the Organizers or Representatives, by reason of their functions, are employees or not, in order to belong to a labor union, has never been ruled upon on its merits.

When the Federation was ordered to recognize and bargain with the Union, with a prior hearing on the merits and basing itself on an invalid Stipulation, it was deprived of

its right to due process of law. The Board's decision is not based on the file, is arbitrary and capricious, a product of confusion or manifest error.

**THE HONORABLE COURT OF APPEALS ERRED IN GIVING VALIDITY TO THE LOCAL AND FEDERAL LABOR RELATIONS ACT.**

In the case at bar, the report and recommendations of the Examining Official, which are attached as Exhibit II, show that the Union conditioned its waiver of the right to negotiate an agreement in exchange for **recognition** by the Federation and certain conditions which were unspecified being met, likewise concludes that **"the parties** to this Stipulation did not act in good faith and that the complaint should therefore be dismissed."

According to the Puerto Rico Civil Code, a contract may be declared null when the cause or object is unlawful (31 LPRA 3516) or when there is "causa turpis" which does not

constitute an offense, (sec. 3517). If our initial premise is the legal interpretation of the aforesaid Examining Official, that "the right to bargain cannot be conditioned", we must conclude that the Stipulation is null because it runs counter to the Labor Relations Act, counter to Public Policy and counter to the Civil Code.

It is crystal clear in the Report of Facts that the Board committed gross error by lending **partial effectiveness to the Stipulation**, contrary to its own findings and to what is ordained by the Civil Code.

We respectfully hold that once both parties had breached the Stipulation, it should have been set aside and the original complaint reinstated. The Board's actions run counter to law, to the agreements between the parties and is *[sic]* contradictory.

There is no room in the field of law for contradictory behavior and it should be

prohibited. See International General Electric v. Concrete Builders, 104 D.P.R. 871 (1976).

The Board probably should not have given its approval to the Stipulation in the first place, but, once it was approved and the original complaint was abandoned, the proper thing was to set aside said stipulation and reinstate the original complaint, not a new complaint based on the Stipulation.

Since the Stipulation was null, it did not generate any rights or obligations. A null act does not produce **any** of the effects which were proposed. See Millán vs. Caribe Motors Co., 83 D.P.R. 494 (1961); De Jesús vs. Guerra, 105 D.P.R. 207 (1976). Therefore, the Board could not nor can it force compliance therewith, partial or full. The most it could do was return to the moment when the Stipulation was signed and continue the proceedings. It having been concluded that

both parties reached the Stipulation without good faith, it had to be enforced exactly as agreed to, or declared null in its entirety. Why enforce it only as against the Federation?

Inasmuch as the Board's decision was based on an invalid agreement, the same cannot be enforced, especially when the law is clear and precise as regards those who are or are not covered by its provisions. The parties **cannot** confer jurisdiction on the board through a private agreement. The authority of the board comes from the Legislature. The Labor Relations Board cannot certify a union of supervisors, nor can an employer commit an unlawful practice by refusing to bargain with said organization. This matter has not been ruled on in Puerto Rico, but it *has* been in the Federal jurisdiction. See: NLRB v. News Syndicate Co., 365 US 695 (1961); Sakrete of N. California v. NLRB, 332 F2d 902 (CA 9th Cir. 1964) Cert. den. 379 US 961 (1965);

Beasley v. Food Fair of N.C. Inc., 416 US 653 (1974) NLRB v. Committee of Intern[s] and Residents, 566 F2d 810 (CA 2nd Cir, 1977) Cert den. 435 US 904 (1978); Hi-Craft Clothing Co. v. NLRB, 660 F2d 910 (CA 3rd Cir 1981) and NLRB v. Yeshiva University, 444 US 672 (1980).

The Labor Relations Board has the obligation to honor the clear meaning of the law as it emerges from its language, purposes and history as well as the courts' interpretation. The Board is a creature of the legislature and can only act within the jurisdictional framework which was delegated to it. The Board cannot expand its own jurisdiction through an administrative decision or by stipulation of the parties.

What is more, this is a question of federal public policy, the field being occupied by the National Labor Relations Act. Section 2(3) of the Federal Act excludes any person "employed as a supervisor" from the

term "employee". For its part, Section 14(a) provides *[English text cited]*:

> Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, **but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.** 29 USC 14.

The above quotation has been construed in the context that occupies us in this case by both the circuit courts [and] the Honorable United States Supreme Court, the prevailing doctrine being that the Board cannot oblige an employer to recognize and bargain with a union of supervisors or managerial staff.

The United States Supreme Court has repeatedly ruled that supervisory or managerial employees are excluded from the act

and that the Board therefore lacks jurisdiction over any controversy between these employees and their employer. The Federal Act occupies the field and any state law which provides otherwise has to yield before the Federal Act. In Beasley v. Food Fair, Inc., 416 [US] 653 (1974), 86 LRRM 2197, the Supreme Court ruled that an employer does **not** have to bargain with a union of supervisors **even though a state law grants them that right.** Hanna Mining v. District 2 MEBA, 382 US 181, 60 LRRM 2473 (1965) et seq.

Beasley, supra, involved a claim for damages by a group of supervisors dismissed from their jobs by reason of their union activities. The controversy was whether Section 14(a) of the Federal Act, supra, prohibited a claim for damages due to dismissal under state law. It is concluded that the local law ran counter to the intention of Congress. The Court stated:

"But the second clause is a broad command that no employer shall be compelled to treat supervisors as employees for the purpose of "any law either national or local relating to collective bargaining". Consistently with this broader command, and Hanna's further statement that "Congress" *[sic]* propelling intention... [was]... to relieve employers from any compulsion under the Act and under state law to countenance or bargain with any union of supervisory employees". (quotations omitted. 86 LRRM p. 2197) "To permit a state law to deprive an employer of his right to discharge his supervisor from membership in a union would completely frustrate the congressional determination to leave this weapon of self-help to the employer". There were differences in the specific provisions addressed to supervisory

employees, but no difference in objective. Employers were not to be obliged to recognize and bargain with unions including or composed of supervisors, because supervisors were management obliged to be loyal to their employer's interests, and their identity with the interests of rank and file employees might impair that loyalty and threaten realization of the basic ends of federal labor legislation. Thus the Hose *[sic]* Report stated: (quotations omitted, 86 LRRM 2197)

**"Management like labor must have faithful agents**... If we are to produce goods competitively, and in such large quantities that many can buy them at low cost, then, just as there are people on labor's side to say what workers want and have a right to expect, there must be in management and loyal to it persons not

subject to influence or control of unions, not only to assign people to their work, to see that they keep at their work and do it well, to correct them when they are at fault, and to settle their complaints and grievances, but to determine how much work employees should do, what pay they should receive for it, and to carry on the whole of labor relations". H.R. Rep. No. 245, 80th Cong., 1st Sess., 16 (1947). What no one, whether employer or employee, need have as his agent *[sic]* one who is obligated to those on the other side, or one whom, for any reason, he does not trust". (86 LRRM 2198)

The same theme-that unionizing supervisors threatened realization of the basic objectives of the Act to increase the output of goods in commerce by

promoting labor peace is repeated in the Senate Report.

This history compels the conclusion that Congress' dominant purpose in enacting §§2(3), 2(11), and 14(a) was to redress a perceived imbalance in labor-management relationships that was found to arise from putting supervisors in the position of serving two masters with opposed interests. See genarally *[sic]* NLRB v. Bell Aerospace Co., 416 U.S. 267, 85 LRRM 2945 (1974). We conclude therefore that **the second clause of §14(a)** relieving the employer of obligations under "any law, either National or local, relating to collective-bargaining" **applies to any law that requires an employer "to accord to the front line of management the anomalous status of employees".** S. Rep. No. 105, supra, 5. Enforcement against respondent in this case of §§95-81 and

> 95-83 would plainly put pressure on respondent "to accord to the front line of management the anomalous status of employees", and would therefore flout the national policy against compulsion upon employers from either federal or state agencies to treat supervisors as employees. (Emphasis supplied).

More recently the United States Supreme Court in NLRB v. Yeshiva University, 444 US 672 (1980), 103 LRRM 2526 (1980) in considering a petition to certify a union of university professors, stated *[English text cited]*:

> But professionals, like other employees, may be exempted from coverage under the Act's exclusion for "supervisors" who use independent judgment in overseeing other employees in the interest of the employer, **or under the judicially implied exclusion for "managerial employees" who**

**are involved in developing and enforcing employer policy.** Both exemptions grow out of the same concern: That an employer is entitled to the undivided loyalty of its representatives. Beasley v. Food Fair of North Carolina, 416 U.S. 653, 661-662, 86 LRRM 2196 (1974); see NLRB v. Bell Aerospace Co., 416 US 267, 281-282, 85 LRRM 2945 (1974). Because the Court of Appeals found the faculty to be managerial employees, it did not decide the question of their supervisory status. In view of our agreement with that court's application of the managerial exclusion, we also need not resolve that issue of statutory interpretation. (103 LRRM 2530)

Managerial employees are defined as those who "'formulate and effectuate management policies by expressing and making operative the decisions of their

> employer'". NLRB v. Bell Aerospace Co., supra, 416 US, at 288 (quoting Palace Laundry Dry Cleaning, 75 NLRB 320, 323, n. 4, 21 LRRM 1039 (1947)). **The employees are "much higher in the managerial structure" than those explicitly mentioned by Congress, which "regarded [them] as so clearly outside the Act that no specific exclusionary provision was thought necessary".** Id., at 283. Managerial employees must exercise discretion within or even independently of established employer policy and must be aligned with management. (103 LRRM 2531)

The Court concluded that the participation of the professors in decision making concerning rules, policies, strategies and costs turned them into managerial staff excluded from the protection of the act and that therefore **the**

**National Board had no jurisdiction** to certify the union or to oblige the employer to recognize and bargain therewith.

In 1981, interpreting the legislative history concerning the exclusion of supervisors from the Federal Act, the Third Circuit in refusing to enforce a Decision and Order of the National Board, stated *[English text cited]*:

> The Senate and the House reports made it very clear that "[s]upervisors are management people... They abandoned the 'collective security' of the rank and file voluntarily because they believed the opportunities thus opened to them to be more valuable to them than such 'security'" H.R. Rep. no. 245, 80th Cong., 1st Sess., 16-17 (1947). In disapproving the Board's interpretation, the House Report commented: "What the bill does is to say what the law always

has said until the Labor Board, in the exercise of what it modestly calls its 'expertness', changed the law: **That no one, whether employer or employee, need have as his agent one who is obligated to those on the other side, or one whom, for any reason, he does not trust".** Id. at 17 (emphasis in original). In NLRB v. Bell Aerospace Co., the Court reviewed this legislative history and rejected the Board's ruling that the agency had jurisdiction because certain buyers were not managerial employees. The Board was instructed to apply a more limited definition in keeping with the intent of the Taft-Hartley amendment to exclude managerial personnel. 416 U.S. at 289. Thus, in delineating the category of persons excluded, the Court construed the Amendment liberally. Beasley v. Food Fair of North Carolina, Inc., 416 US 653,

> 661-62, 86 LRRM 2196 (1974), employed a similar philosophy. There the Court held that remedies granted by the state to supervisors for discharges because of union membership were preempted by the Taft-Hartley Act. (Emphasis supplied) When only the supervisor's interests are at stake, it is clear that the intent of the Taft-Hartley Amendments is **to deny jurisdiction to the Board.**

The Court refused to enforce the Board's Order because it felt that it overstepped its own jurisdiction.

Therefore, there should be no doubt that in the instant case the Labor Relations Board is prohibited from ordering the employer to negotiate a collective bargaining agreement for a group of supervisory or managerial employees. This is so even though the employer has voluntarily decided to recognize

the union. It is similar to the case of the municipalities and government agencies which recognize bona fide organizations for discussion and resolution of labor problems. At the time when it is decided not to recognize them further or not to bargain with them, said organizations cannot turn to the Board to assist them, since the law does not grant them that right.

**PRAYER,** inasmuch as the judgment of the Court of Appeals is contrary to the Puerto Rico Labor Relations Act, to Federal and Local Public Policy in the labor field, since the Puerto Rico Labor Relations Board acted without jurisdiction, we very respectfully pray that the judgment impugned herein be revoked.

**RESPECTFULLY SUBMITTED,** in San Juan, Puerto Rico, this 3rd day of June, 1993.

**I CERTIFY,** a true and correct copy of the instant appeal was sent to the Legal Division of the Puerto Rico Labor Relations Board to its addresses of record.

*[Signature]*

**GODWIN ALDARONDO GIRALD**

**BAR ASSOCIATION NUMBER 7486**

**LE MANS CONDOMINIUM, SUITE 803**

**602 LUIS MUÑOZ RIVERA AVENUE**

**HATO REY, PUERTO RICO 00918**

**TELS. (809) 766-2876; (809) 767-1685**

**FAX (809) 751-9832**

- CERTIFIED -

o be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

CERTIFIED TRANSLATION _ EXHIBIT XVI

IN THE PUERTO RICO SUPREME COURT

| | | |
|---|---|---|
| PUERTO RICO TEACHERS FEDERATION | * | |
| Plaintiff & Petitioner | * | CIVIL NO. CE-93-192 |
| VS. | * | IN RE: CERTIORARI |
| PUERTO RICO LABOR RELATIONS BOARD | * | *[There is a filing stamp which reads:] 1993 JUL 20 PM 2:12/[illegible]* |
| Defendant & Respondent | * | |

* * * * * * * * * * * * * *

MOTION FOR RECONSIDERATION

TO THE HONORABLE COURT:

Comes now petitioner Puerto Rico Teachers Federation, represented by the undersigned counsel and very respectfully STATES AND PRAYS:

1. On July 2, 1993, this Honorable Court entered a Ruling in which it denied the Writ of Certiorari submitted by the party appearing herein. A copy of the notice of said Ruling was filed in the case record on July 7, 1993.

2. Petitioner herein prays for reconsideration of the aforesaid Ruling because it is matter of public policy not only in the Commonwealth of Puerto Rico but also in the United States. The decision of the Labor Relations Board and the trial Court runs contrary to the Puerto Rico Labor Relations Act, the National Labor Relations Act, public policy and the labor field and violates due process of law guaranteed by the Constitution of Puerto Rico and the United States.

3. The Ruling impugned herein has the effect of forcing petitioner Puerto Rico Teachers Federation to bargain with a **"Union"**

**composed of managerial and/or supervisory employees** in violation of the Federal Labor Relations Act and the Puerto Rico Labor Relations Act. Article 2 of the Puerto Rico Labor Relations Act defines the term employer in the following manner:

> "The term **employer** shall include **executives**, supervisors and **any person who performs activities of an executive nature in the interest of an employer, directly or indirectly,** provided that it shall include, moreover, any individual, partnership or organization which intervenes in favor of the employing party in any labor dispute or collective bargaining". (29 L.P.R.A. Sec. 63 (2))

The Term employee is defined by the Puerto Rico Labor Relations Act in the following fashion:

> "The term "employer" shall include any employee and shall not be limited to the employees of one employer in particular... ... **The term shall not include executives or supervisors.** (29 L.P.R.A. Sec. 63 (3))

For its part, Article 4 of the aforesaid Act expressly establishes that:

> "The **employees** are entitled, among other things, to organize among them-selves; to constitute, affiliate with or assist labor organizations; to bargain collectively through representatives of their choosing; and to engage in concerted activities aimed at

> collective bargaining or some other purpose of mutual assistance or protection. (29 L.P.R.A. Sec. 65)

The **National Labor Relations Act** as amended, 29 USC sec. 152 defines said terms in a very similar manner.

The above articles show that executives and supervisors are expressly excluded from the right to organize into labor unions. They do not have such a right and the Labor Relations Board lacks the authority to recognize or certify a union of supervisors or executives.

Managerial employees and/or employees of trust have repeatedly and consistently been excluded from the suitable unit by the Puerto Rico Board of Labor Relations. In that regard see, **Autoridad de Fuentes Fluviales,** D-465; **Autoridad de Energía Eléctrica,** PC-84, D-900; **Compañia** *[sic]* **de Turismo de Puerto Rico,** Dec. 814 (1980).

In the case of **Compañía de Turismo,** supra, the Labor Relations Board, consistent with the pronouncements of the United States Supreme Court and the National Labor Relations Board, stated thqt the concept **"intimately linked with management" presupposes an alignment of ideas, interests and attitudes between the employee who creates or determines policy and the employer's administrative and managerial rules.** See also, **Yeshiva University v. NLRB,** 444 U.S. 672 (1980); **EDP Computer Séptims** 284 NLRB 117, 128 LRRM 1056; **NLRB v. Hendricks County** 454 U.S. 170 (1981), **NLRB v. Bell Aerospace,** 416 U.S. 267 (1974).

In the above-cited cases, the United States Supreme Court has ruled that this subject is a matter of federal public labor policy and that a state Board which certifies a union of supervisors or managerial employees violates national public policy and should be set aside. *[sic]*

The Union certified by the Board in this case is composed of ten organizers or regional representatives. The function of each organization or representative within his region is to (1) enforce the rules, strategies and policies of the Federation; (2) to plan, develop and recommend a work plan for its area; (3) to recruit, organize and affiliate teachers with the Teachers Federation; (4) to represent the Teachers Federation in its area, receiving and processing complaints and grievances; (5) to meet with teachers, school principals and superintendents for discussion and problem-solving; (6) to participate in meetings to set strategies and policies to be followed by the Teachers Federation island-wide; (7) to participate in the Federation's decision making and to elect the members of the Board of Directors; Delegate Assembly and Executive Committee.

These representatives have so much authority that of eleven members who comprise

the **Federation's Executive Committee, seven (7) belong to the Regional Representatives,** (the organizers). It is evident, then, that these employees are intimately linked to management [and] cannot, consequently, be entitled to organize and bargain collectively.

The judgments of the Superior Court and the Court of Appeals show that the reason for forcing the Teachers Federation to recognize and bargain collectively with the Puerto Rican Federation of Workers concerning the organizers is the stipulation which was signed by the parties on March 8, 1989. To that effect on page 4 of the Judgment entered by the Puerto Rico Superior Court, San Juan Part, the Court writes as follows:

> As an element of opposition, the Teachers Federation adduces additionally that it was deprived of presenting evidence before the Board concerning the exclusion of the "organizers" from the Labor Relations

Act and the unsuitableness of the unit. It holds, moreover, that this controversy, concerning whether the "organizers", by virtue of their functions, may or may not belong to the labor union, was not ruled upon by the Board.

In the latter subject, the Teachers Federation is correct. The controversy was not ruled upon by the Board. It was ruled upon by the parties themselves in the settlement stipulation which was transcribed above in its entirety, wherefor it was not necessary to present evidence.

The stipulation of this case constitutes a settlement which is, in turn, a contract by which the parties, supposing that the litigious issue is doubtful or because they entertain doubts about its their

> respective rights, by each one giving, promising or withholding something, avoid the provocation of a lawsuit or put an end (as they did before the [Labor] Relations Board) to the one they had started. As such, the settlement stipulation in this case recognizes rights and had the scope of adjudication of such rights, implying a formal abandonment of any contention contrary thereto. Once the settlement stipulation was approved, as, in effect, it was approved by the Board, it binds the parties and those whom they represent. In binding the parties, the settlement stipulation contract has the effect of res judicata".

Can a stipulation confer jurisdiction on the Puerto Rico Labor Relations Board concerning a matter over which the Board lacks authority?

Can the parties validly enter into an agreement that runs counter to the public policy of the Commonwealth and the United States?

The parties cannot confer jurisdiction on the Board through a private agreement. The Labor Relations Board cannot certify a union of supervisors, nor can an employer commit an unlawful practice by refusing to bargain with said organization. Said "unlawful practice" does not exist. See, among others, **N.L.R.B v. News Syndicate Co.** 365 U.S. 695 (1961); **Sakarete of N. California v. N.L.R.B.,** 332 F2d. 902 (1964); **Beasley v. Food Fair of N.C. Inc.,** 416 U.S. 653 (1974); **NLRB v. Geshiva** *[sic]* **University,** 444 U.S. 672 (1980).

The Labor Relations Board has the obligation to honor the clear meaning of the law, as is evident from its language, purposes and history as well as the interpretation of the courts. The Board is a creation of the legislature and may only act within the jurisdiction which was delegated to it. The

Board cannot expand its own jurisdiction through an administrative decision or by stipulation of the parties. Especially when it is a matter of federal public policy, in which the "National Labor Relations Act" occupies the field, and where any person employed as a supervisor is expressly excluded from the term "employer". To that effect, Section 14 (a) of the aforesaid Act (NLRA) expressly provides:

> Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, **but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.** 29 USC 14.

The above quotation has been construed in the context before us, both by the Circuit Courts and the United States Supreme Court, for

the purpose that the Board may not force an employer to recognize and bargain with a union of Supervisors and managerial staff.

The United States Supreme Court has repeatedly ruled that supervisory or managerial employees **are excluded from the act and the Board therefore lacks jurisdiction over any controversy between these employees and their employer.** The Federal Act occupies the field and any state law which provides otherwise has to yield before the Federal Act. In **Beasley v. Food Fair, Inc.**, 416 U.S. 653 (1974), the Supreme Court ruled that **an employer does not have to bargain with a union of supervisors even though a state law grants them that right.**

Based on the above-cited Acts and case law, there should not remain the slightest doubt that in the instant case that the Puerto Rico [Labor] Relations Board lacks jurisdiction to impose on the employer the obligation to negotiate a Collective Bargaining Agreement for a group of supervisory or managerial employees. This is so

even though the employer has voluntarily decided to recognize the Union.

A failure to set aside the Ruling impugned herein would constitute a flagrant violation of due process of law to which petitioner herein is entitled. In effect it is necessary that the Puerto Rico Labor Relations Board rule on whether or not the members of the respondent Union are managerial employees; for this, the Board should receive testimonial and documentary evidence from the parties. In the instant case, **the Board has never ruled on its merits whether the Union members are managerial employees or not.** The Superior Court so ruled in the instant case. Page *[illegible]* of the Judgment.

This Honorable Court has the duty, one which cannot be delegated or postponed, to lend force to and impose the clear public policy in the labor field established by the Puerto Rican legislature, the United States Congress and the United States Supreme Court and to guarantee petitioner its right to due process of law.

**PRAYER**

Inasmuch as the Ruling impugned herein is contrary to the Puerto Rico Labor Relations Act, the Federal Labor Relations Act and due process of law, it is proper as an issue of law to set aside said Ruling and consequently issue the writ of certiorari prayed for, remanding the case to the Labor Relations Board to pass judgment on whether the organizers are "employees" for purposes of the law or are supervisors / managerial staff excluded from the protection of same.

**I CERTIFY** that I have sent a true and correct copy of this writ to Leticia Rodríguez García, Esq., Legal Division of the Puerto Rico Labor Relations Board, P. O. Box 14427, Barrio Obrero Station, Santurce P.R. 00916[.]

RESPECTFULLY SUBMITTED[.]

In San Juan, Puerto Rico, this 20th day of July, 1993.

*[Signature]*

**GODWIN ALDARONDO GIRALD**

**BAR ASSOCIATION NUMBER 7486**

**LE MANS CONDOMINIUM, SUITE 803**

**602 LUIS MUÑOZ RIVERA AVENUE**

**HATO REY, PUERTO RICO 00918**

**TELS. (809) 766-2876;**

**(809) 767-1685**

**FAX (809) 751-9832**

- CERTIFIED -

to be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT XVII

**IN THE PUERTO RICO SUPREME COURT**

| | |
|---|---|
| **PUERTO RICO TEACHERS FEDERATION** | * |
| **Plaintiff & Petitioner** | *CIVIL NO. CE-93-192 |
| **VS.** | *IN RE: CERTIORARI |
| **PUERTO RICO LABOR RELATIONS BOARD** | *[There is a filing stamp which reads:] FILED / CLERK'S OFFICE/ SUPREME |
| **Defendant & Respondent** | *COURT/'93 AUG 27 P 4:50 |

**SECOND MOTION FOR RECONSIDERATION**

**TO THE HONORABLE COURT:**

Comes now petitioner Puerto Rico Teachers Federation, represented by the undersigned counsel and very respectfully STATES AND PRAYS:

1. On August 25, 1993, the party appearing herein was notified of the Ruling which this Honorable Court entered on August 20. A copy of the notice of said ruling was filed in the case record on August 24, 1993.

2. Through said ruling, the Motion for Reconsideration submitted by petitioner was denied.

3. Petitioner respectfully holds that said ruling is erroneous since it renders inalterable the decision of the Labor Relations Board and the Trial Court, which are contrary to the Puerto Rico Labor Relations Act, the National Labor Relations Act and public policy in the labor field, as it forces petitioner to recognize and bargain with a group of managerial

employees and/or employees who are intimately linked to management.

4. We reiterate that the judgments of the Superior Court and the Court of Appeals show that the reason for forcing the Teachers Federation to recognize and collectively bargain with the "Puerto Rican Federation of Workers", is the stipulation which was signed by the parties on March 8, 1989.

To that effect, page 4 of the Judgment entered by the Puerto Rico Superior Court, San Juan Part[,] the Court states the following:

> As an element of opposition, the Teachers Federation adduces additionally that it was deprived of presenting evidence before the Board concerning the exclusion of the "organizers" from the Labor Relations Act and the unsuitableness of the unit. It holds, moreover, that this

controversy, concerning whether the "organizers", by virtue of their functions, may or may not belong to the labor union, was not ruled upon by the Board.

**In the latter subject, the Teachers Federation is correct. The controversy was not ruled upon by the Board.** It was ruled upon by the parties themselves in the settlement stipulation which was transcribed above in its entirety, wherefor it was not necessary to present evidence.

The stipulation of this case constitutes a settlement which is, in turn, a contract by which the parties, supposing that the litigious issue is doubtful or because they entertain doubts about its their

respective rights, by each one giving, promising or withholding something, avoid the provocation of a lawsuit or put an end (as they did before the [Labor] Relations Board) to the one they had started. As such, the settlement stipulation in this case recognizes rights and had the scope of adjudication of such rights, implying a formal abandonment of any contention contrary thereto. Once the settlement stipulation was approved, as, in effect, it was approved by the Board, it binds the parties and those whom they represent. In binding the parties, the settlement stipulation contract has the effect of res judicata".

5. In the face of such a conclusion by the Honorable Trial Court we raised the following questions:

Can a stipulation confer jurisdiction on the Puerto Rico Labor Relations Board concerning a matter over which the Board lacks authority?

Can the parties validly enter into an agreement that runs counter to the public policy of the Commonwealth and the United States?

The parties cannot confer jurisdiction on the Board through a private agreement. The Labor Relations Board cannot certify a union of supervisors, nor can an employer commit an unlawful practice by refusing to bargain with said organization. Said "unlawful practice" does not exist. See, among others, **N.L.R.B v. News Syndicate Co.** 365 U.S. 695 (1961); **Sakarete of N. California v. N.L.R.B.,** 332 F2d. 902 (1964); **Beasley v. Food Fair of N.C. Inc.,** 416

U.S. 653 (1974); **NLRB v. Geshiva** *[sic]* **University,** 444 U.S. 672 (1980).

The Labor Relations Board has the obligation to honor the clear meaning of the law, as is evident from its language, purposes and history as well as the interpretation of the courts. The Board is a creation of the legislature and may only act within the jurisdiction which was delegated to it. The Board cannot expand its own jurisdiction through an administrative decision or by stipulation of the parties. Especially when it is a matter of federal public policy, in which the "National Labor Relations Act" occupies the field, and where any person employed as a supervisor is expressly excluded from the term "employer". To that effect, Section 14 (a) of the aforesaid Act (NLRA) expressly provides *[English text cited]*:

> Nothing Herein *[sic]* shall prohibit any individual employed as a

> supervisor from becoming or remaining a member of a labor organization, **but no employer subject to this act shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargain-ing. 29 USC 14.**

The above quotation has been construed in the context before us, both by the Circuit Courts and the United States Supreme Court, for the purpose that the Board may not force an employer to recognize and bargain with a union of Supervisors and managerial staff.

The United States Supreme Court has repeatedly ruled that supervisory or managerial employees **are excluded from the act and the Board therefore lacks jurisdiction over any controversy between these employees and their employer.** The Federal Act occupies the field

and any state law which provides otherwise has to yield before the Federal Act. In **Beasley v. Food Fair, Inc.**, 416 U.S. 653 (1974), the Supreme Court ruled that **an employer does not have to bargain with a union of supervisors even though a state law grants them that right.**

This Honorable Court has the duty, one which cannot be delegated or postponed, to lend force to and impose the clear public policy in the labor field established by the Puerto Rican legislature, the United States Congress and the United States Supreme Court.

It cannot, we reiterate, force petitioner herein to recognize and collectively bargain with a union composed of managerial employees and/or employees intimately linked with management.

This Honorable Court as the highest judicial forum in the Commonwealth of Puerto

Rico must prevent a finding which runs counter to law, case law and public policy to prevail.

WHEREFORE, it is very respectfully prayed that the instant motion be granted.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 27th day of August, 1993.

**I CERTIFY** that I have sent a true and correct copy of this writ to Leticia Rodríguez García, Esq., Legal Division of the Puerto Rico Labor Relations Board, P. O. Box 14427, Barrio Obrero Station, Santurce P.R. 00916[illegible]

*[Signature]*

- CERTIFIED -
to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**GODWIN ALDARONDO GIRALD**
**BAR ASSOCIATION NUMBER 7486**
**LE MANS CONDOMINIUM, SUITE 602**
**602 LUIS MUÑOZ RIVERA AVENUE**
**HATO REY, PUERTO RICO 00918**
**TELS. 766-2876; 767-1685**
**FAX 751-9832**

**CERTIFIED TRANSLATION** – EXHIBIT XVIII

*[official seal]* Commonwealth of Puerto Rico

EXHIBIT XII

PUERTO RICO LABOR RELATIONS BOARD

*[address, etc.]*

*[illegible rubric]*

MAR 30 1989

| | | |
|---|---|---|
| *PRTF* | IN THE CASE OF : | |
| *VS* | PUERTO RICO : | |
| | TEACHERS : | |
| *PFW* | FEDERATION : | |
| | | :CASE NO. CA-89-57 |
| | Defendant | :*[filing stamp reads:* |
| | - and - | :RECEIVED *[illegible]* |
| PUERTO RICAN FEDERATION | | :JUN 19 1990*]* |
| OF WORKERS | | : |
| | Complainant | : |
| | | : |

BEFORE: Agnes Maisonet de Marcano, Esq.

Administrative Judge

APPEARANCES:

Raúl Pérez Muñiz, Esq.

Raúl Santiago Meléndez, Esq.

For the Teachers Federation *[Filing stamp reads:*

Migdalia Adrover Rodríguez, Esq.

P. R. LABOR RELATIONS

For the Public Interest *[illegible]* / 90 JUN

Mr. Ramón Fuentes 14 PM 3:01*]*

For the Puerto Rican Federation

of Workers

**REPORT OF THE EXAMINING OFFICIAL**

The Puerto Rican Federation of Workers, hereinafter Complainant, filed a charge before the Puerto Rico Labor Relations Board, hereinafter the Board, on June 21, 1989. By virtue of said charge, the Board issued a complaint against the above-captioned employer, accusing it of violation of Article 8 (1)(d) of

the Puerto Rico Labor Relations Act, which from this point on we shall call the Act.[1]

The parties were duly noticed with copies of the Charge, Complaint and the respective Notice of Hearing. The undersigned was designated by the Chairman of the Board to act as the Examining Official.

The complaint, in essence, accuses Defendant of refusing to bargain with the complainant labor organization, from May 3, 1989 until the present, notwithstanding the fact that the latter is the exclusive representative of the employees who comprise the contracting unit of organizers of the Puerto Rico Teachers Federation.[2]

---

[1] 29 LPRA 69 (1)(d)

[2] As shown by the Decision and Certification of Representative issued by the Board in Case No. P-88-10; D-89-1121.

Before continuing with our Report, we must explain succinctly, the factual and procedural background of the instant case.

I. **Factual and Procedural Background**

On July 1, 1988, the Puerto Rican Federation of Workers filed before this Organism a Petition to Investigate and Certify Representative in which it alleged that a controversy had arisen concerning the representation of the employees utilized by the Puerto Rico Teachers Federation, in a suitable unit for collective bargaining. Therefore, it prayed the Board, following investigation, to rule on said controversy.

The respondent unit includes: "all the representatives of organization and development utilized by the Puerto Rico Teachers Federation".

Following a preliminary investigation into the facts in controversy, as well as the

composition of the respondent unit, the Chairman of the Board ordered the holding of elections prior to the hearing, as part of said investigation.[3] The elections were held on October 13, 1988, under the direction and supervision of the Board's Chief Examiner, Atty. Olga Iris Cortés Coriano. As is shown on the Vote Checksheet, a copy of which will be supplied to the parties, the complainant labor organization obtained in its favor a majority of the valid votes issued by the employees of the Puerto Rico Teachers Federation entitled to participate in these elections.

Following the elections and the subsequent vote count, the Board's Investigative Division took steps for the employer to recognize the Puerto Rican Federation of Workers

---

[3] As provided in Article III, Section 6, Clause (a) of Regulation No. 2 of the Board.

as the exclusive representative of the employees concerned, for purposes of collective bargaining, which the former refused to do on the grounds stated in its communication of August 22, 1988.[4]

---

[4] Document entitled "Brief in Support of the Position of the Puerto Rico Teachers Federation", subscribed by Respondent's legal counsel, Atty. Raúl Pérez Muñiz. In essence, the document states that the Federation refuses to recognize the complainant labor organization as the exclusive representative of the organizers of the Puerto Rico Teachers Federation, because it considers that the latter are employees who are intimately linked to managerial interest, which places them outside the definition of "employee" contained in the Puerto Rico Labor Relations Act.

After analyzing the assertions put forward by the employer, in light of the entire case file (Case No. P-88-10), the Board ordered the holding of a Public Hearing, which took place on March 8, 1989 before the designated Examining Official, Atty. Antonio Rodas Viñas. Once the hearing was underway, the parties reported to the Examining Official that they had arrived at an agreement by virtue of which the Puerto Rico Teachers Federation recognized the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for purposes of collective bargaining.[5]

---

[5] As shown in the Official Transcript, on pages 1 and 2, Case No. P-88-10. The stipulation or agreement was expressed in documents signed by Messrs. Ramón Fuentes and Renán Soto Soto,

In view of the above and in accordance with Article 5, Clause 3 of the Act and based on the results of the elections held on October 13, 1988, the Board proceeded to certify the Puerto Rican Federation of Workers as the representative of the employees who comprised the aforesaid suitable unit, for purposes of collective bargaining with respect to wages, working hours and other conditions of employment.

Consonant with the foregoing, on March 28, 1989, the Board proceeded to close and file the case on representation.

On June 21, 1989, the Puerto Rican Federation of Workers requested the Board's intervention, in the face of the alleged refusal

---

representatives of the petitioning labor organization and the Teachers Federation, respectively. (Exhibit 2 of Public Interest).

by Defendant to bargain. Following a preliminary investigation of the facts supporting the charge, conducted by the Board's Investigative Division, the appropriate complaint was issued against the Puerto Rico Teachers Federation.[6]

---

[6] The complaint, issued on August 21, 1989, to which was

(continued...)

[6](...continued)
attached a copy of the Charge and the respective Notice of Hearing, was noticed to the Puerto Rico Teachers Federation by hand, through its legal counsel. The aforesaid documents were received by Iris F. Mojica, Secretary to Atty. Angel Raúl Pérez Muñiz, on August 25, 1989, as

II. **Preliminary Considerations**

---

certified to in the "Receipt Payment Delivery of Documents" issued by the Secretary of the Board.

The complaint having thus been issued and duly noticed, respondent was granted a term of twenty (20) days, as of the date of notification, to file a written answer thereto. It was advised, additionally, that the duly granted term could be extended under extraordinary circumstances. On the other hand, it was likewise cautioned that failure to respond within the term granted would be construed to be a waiver of the right to a public hearing. Notwithstanding the above warnings, Respondent did not file its answer to the complaint in the time allowed.

The public hearing held in the instant case commenced on September 21, 1989, in the Hearing Room of the Board. The Public Interest was represented by Atty. Migdalia Adrover Rodríguez. Atty. Raúl Pérez Muñiz appeared in representation of respondent. Once the day's proceedings were underway, counsel for the Public Interest filed an Oral Motion to Hold in Contempt on the grounds that respondent failed to answer the complaint issued against it, in spite of the fact that it was duly notified. Defendant, on its part, requested to be granted a term of five (5) working days to show cause why it should not be held in contempt and to answer the complaint.

This Examining Official granted defendant's prayer regarding the Motion to Show Cause. The Motion for Entering of Default filed by the Public Interest remained in abeyance until such time as defendant would present its

Motion showing cause why default should not be entered. A recess was ordered until October 5, 1989.[7]

On September 28, 1989, defendant filed a document entitled "Motion Showing Cause", in which it explained that the President of the Puerto Rico Teachers Federation moved to the city of Washington (United States of America), on official business, after August 25, 1989, the date on which the Secretary of the Board served notice with a copy of the complaint. That once back in Puerto Rico, Mr. Renán Soto Soto became "involved in a controversy with the executive power of the Government of Puerto Rico", incidents which made it virtually impossible for

---

[7] The recess was requested by Atty. Raúl Pérez Muñiz in view of the situation reigning in Puerto Rico as a consequence of the passing of Hurricane Hugo on September 18, 1989.

him to reasonably answer the complaint issued against the Puerto Rico Teachers Federation.

On the same date defendant filed in addition a document entitled "Answer to the Complaint".

On September 29, 1989, the Public Interest filed a "Motion in Opposition to Motion Showing Cause and Answer to the Complaint". The contents thereof reveal that the Public Interest basis its opposition on the fact that the reasons adduced by Defendant for failing to answer the complaint in the time allowed have absolutely nothing to do with the controversy raised by the case before us.

Having thoroughly studied the arguments contained in the three motions outlined above, we resolved to deny the Motion Showing Cause on the following grounds: The trip to Washington by the President of the Federation occurred after the notice of the complaint, wherefore the

impossibility of answering it within the term granted by the Board was a foreseeable fact. In the face of the expectation of being unable to answer in the time allowed, defendant could have taken responsible measures, such as requesting an extension to answer, which it would assuredly have been granted by the Chairman of this Organism. If following his return from Washington, Mr. Soto Soto faced new problems which prevented him from devoting time to answer the complaint, he could have let the Board know about these problems, which he did not do.

In synthesis, we respectfully feel that the reasons which prevented defendant from filing its answer to the complaint were foreseeable circumstances and faced with the impossibility of complying with the validly granted term, it should have petitioned the Chairman of the Board, through its legal counsel, to extend the term in which to answer,

an action we consider logical, correct, responsible and consonant with our order.

In that regard, our Highest Court has ruled that Board Regulations, Article II, Section 2, 29 R & R.P.R., Sec. 64-3,[8] was

---

[8] Board Regulations, Art. II Sec. 2 authorizes the Board to deem admitted any undenied allegation in a complaint and the Board may subsequently make conclusions of fact and law based on such admission. Said provision in the pertinent part states that:

"Any allegation in the complaint... undenied by the answer shall be deemed admitted by defendant and the Board may subsequently make conclusions of fact and law based on such admission. At the request of the defendant the Chairman of the Board may extend the term in which to file the answer."

adopted for the purpose of promoting the diligent processing of complaints before the Board, for the sake of good administration of the adjudicative function and the diligent processing of cases. The same aim is pursued by Rule 45 of Civil Procedure, a statute which authorizes holding a party in contempt when it has failed to present allegations or defend itself. Our Highest Court goes on to say that, as a general rule, a good defense must incline the balance in favor of a hearing on the merits, unless the circumstances of the case are of such a nature as to reveal a defaulting or reckless intention on the part of the defendant.

It is fitting to point out that even though default was entered against defendant, its right to cross-examine the witnesses presented by the Public Interest was guaranteed.

The Examining Official, based on all the evidence contained in the entire case record

and observation of the witnesses, issues the following:

**CONCLUSIONS OF FACT:**

I. **The Defendant:**

The Puerto Rico Teachers Federation is an independent entity engaged in organizing teachers, by using employees for these tasks, thus constituting the employer in accordance with the meaning of said term in Article 2, Section 2 and 11 of the Act.

II. **The Complainant Labor Organization:**

The Puerto Rican Federation of Workers is a labor organization which exists for the purpose of obtaining better wages, working conditions and collectively bargaining with employers in the interest of those it represents; it is, therefore, a labor organization within the meaning of Article 2, Section 10 of the Act.

III. **The Facts:**

The Puerto Rican Federation of Workers is the exclusive representative of the organizers of the Puerto Rico Teachers Federation, in accordance with the Certification issued on March 20, 1989 by the Puerto Rico Labor Relations Board, Case No. P-88-10, D-89-1121.

As we indicated supra, said Certification is based on: (1) the results of the elections held on October 13, 1988 and (2) the Stipulation signed by the parties on March 8, 1989. By signing said Stipulation, Defendant pledged to recognize "the Puerto Rican Federation of Workers as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation, for the purposes defined in Act 130 and according to the Board itself it established

it by ruling on September 16, 1988."[9] On the other hand, the Puerto Rican Federation of Workers pledged "not to exercise its right to bargain collectively, in representation of the organizers, as long as certain conditions obtain, which are going to be established by the parties on or before March 20, 1989, by making a maximum effort to achieve same."[10]

The parties involved in this controversy met on March 20, 1989 to discuss the conditions alluded to in the Stipulation of March 8, 1989.[11] That same day (March 20, 1989), Complainant handed Defendant a "Proposal" containing the conditions which that labor organization feels are the ones mentioned in

---

[9] Stipulation of March 8, 1989, paragraph 1.

[10] Stipulation of March 8, 1989, paragraph 2.

[11] T. O. p. 13

paragraph number 2 of the agreement signed by the parties.[12]

The meeting of March 20 did not bear the desired fruits and the parties agreed to meet again. The second meeting took place on March 31, 1989. That same day, Complainant handed Defendant a letter addressed to Mr. Renán Soto Soto, in which it gives notice of its intention to initiate bargaining in the interest of the organizers.[13]

Complainant, anticipating the possibility of a refusal to bargain, prepared the letter of March 31 for the purpose of delivering it to the President of the Puerto Rico Teachers Federation, should the latter express his intention not to bargain, which in fact happened. In the course of the meeting,

---

[12] T.O. p. 45, 62 and 63

[13] Letter of March 31, 1989 signed by Mr. Ramón L. Fuentes.

Mr. Soto informed the Union that in his capacity as President of the Puerto Rico Teachers Federation, he was not authorized to bargain collectively with respect to terms and conditions of employment of the organizers.[14]

On May 3, 1989, Complainant sent a second letter to Defendant accompanied by a "Proposal of Collective Bargaining Agreement" for the Organizers Unit of the Puerto Rico Teachers Federation.[15]

The third communication, giving Defendant notice of its intention to sit down to bargain and the date and time when it would be available, was sent by Complainant on May 23, 1989.[16]

---

[14] T.O. pp. 56, 57 and 58.

[15] Exhibit 3 - Compendium of Documents - Public Interest.

[16] Letter of May 23, 1989, addressed to Mr. Renán Soto Soto and signed by Mr.

After turning to this Board for jurisdiction, Complainant wrote a fourth invitation to bargain, which was sent by certified mail return receipt requested and received by Defendant on September 25, 1989, as shown on the return receipt no. P/692-641-697.[17]

**Analysis:**

A charge of refusal to bargain will be successful if four indispensable elements are present: that a representative has been designated by a majority of the employees; that the unit is suitable; that a requirement to bargain collectively has been made by the representative and that the employer has refused

---

Ramón L. Fuentes.

[17] Letter of September 14, 1989, addressed to Mr. Renán Soto Soto and signed by Mr. Ramón L. Fuentes.

to bargain.[18] In the instant case there is no controversy over the first two elements, the latter two remaining in dispute, even though Defendant has argued insistently that there is, indeed, a controversy as regards the first two elements. It seems to us that there can be no controversy with respect to the representative of the employees and the composition of the suitable unit, since it was the Puerto Rico Teachers Federation itself, represented by its President, Mr. Renán Soto Soto, who recognized Complainant, Puerto Rican Federation of Workers "as the exclusive representative of the contracting unit of the organizers of the Puerto Rico Teachers Federation....." By recognizing Complainant as the exclusive representative of

---

[18] Federico Barela, *[cited in English:]* The Puerto Rico Labor Relations Act: A State Policy and Its Application, page 315 (1962).

the employees concerned, Defendant in turn recognized the suitability of the aforesaid unit. It is a general maxim of Law that it is not lawful for anyone to go against their own acts (estoppel). Our Highest Forum has pondered on repeated occasions that contradictory behavior has no place in the field of Law and must be prohibited. Int. General Electric v. Concrete Builders, 104 DPR 871 (1976). This doctrine is based on good faith as the governing principle of juridical life. Diez Picazo defines good faith as "fidelity in behavior, upright and faithful conduct. It supposes the keeping of the fidelity of one's word and not betraying trust nor abusing it.["] Diez Picazo,*[sic]* La Doctrina de los Propios Actos, 1963 Ed., p. 157.

On the other hand, Defendant claimed on repeated occasions in the course of the public hearing, its right to collaterally attack the

Decision and Order of the Board in Case P-88-10; D-89-1121. This is erroneous inasmuch as in our ordinance a Decision and Order for Elections is susceptible to "collateral attack" only after a Decision and Order in a case of unlawful practice for refusal to bargain with the union which won the elections.[19] Once the Decision and Order for Elections is issued, the election process is carried out and the union which has prevailed is certified, if that is the case. It then falls to the employer to sit down to

---

[19] Article 5 (3) and (4) of Act 130 of May 8, 1945, as amended, 29 LPRA 66 (3), (4). Junta de Retiro para Maestros, Case No. CA-89-41, D-89-1147.

(continued...)

[19](...continued)

bargain, at the request of the union. Should it refuse, the union may file a Charge of unlawful labor practice, as in this case. That is how the procedure provided in this Organism is initiated, that should the complaining party prevail, it would obtain a Decision and Order in its favor ordering the defendant to sit down to bargain. If the employer insists on not bargaining because it does not accept the Board's finding, it is then that this Organism has to turn to the Supreme Court to pray for enforcement of the decision, and it is at that point that the employer has the right to collaterally attack the Decision and Order in the case of representation.[20] Notwithstanding all the above, we reaffirm our position that Defendant could not be successful in its collateral attack of the Decision and Order

---

[20] Junta de Retiro para Maestros, supra.

issued by the Board in the case of representation, because it is prohibited by its own acts. In the autonomous juridical construction which give form to the rule of not going against ones own acts, the effect is produced objectively, in which the genuine will of the author of the acts does not count for anything. The trust which these acts produce in the third parties is protected, because to turn against them would obviously constitute an attack against good faith. When a person is prohibited from going against his own acts, the entire doctrine of declaration of will is completely cast aside in order to directly impose a juridical effect.[21]

---

[21] Diez-Picazo, La Doctrina de los Propios Actos, p. 151; Puig Brutau, Estudios de Derecho Comparado, p. 126 and ss.; Int. General Electric, supra.

Based on the aforesaid grounds we shall henceforth address our attention to the call to bargain made by the representative of the organizers and to the employer's alleged refusal to bargain. This means that we must pass judgment on whether the requirements for sitting down to bargain, raised by Complainant, do or do not fulfill the technical requirements[22] set forth in our Ordinance in order for the Employer to be accused of refusal to bargain. Nevertheless, we shall pause here to analyze

---

[22] Specific notice of the place, date and time to meet and statements that the purpose of the meeting is to negotiate a collective bargaining agreement. It is recommendable that this notice be made by certified mail return receipt requested. Abelardo Ceide, d.b.a. Finca Victoria y Carrizales, 4 DJRT 591 (1962).

paragraph no. 2 of the Stipulation signed by the parties on March 8, 1989.

It is abundantly clear that the Union, by signing such a Stipulation, conditioned the right of the Puerto Rico Teachers Federation's Organizers to collective bargaining, a right consecrated by the Act in its Article 4. It is our opinion that the right of certain employees to collective bargaining cannot be conditioned by circumstances extrinsic to the bargaining; nor can it be conditioned at the whim and caprice of the representative of said employees. Therefore, even though the bargaining was subject to the existence of certain circumstances, we shall find that this circumstance is "not established". We then move on to analyze the four bargaining requirements which the Union made of Defendant.

The letter of March 31, 1989 does not fulfill the requirements of notice which we

mentioned supra. If indeed it is true that Complainant expresses to the Employer its intention to initiate the bargaining, it is no less certain that it does not indicate the specific place, date and time to meet. The letter of May 3, 1989, like the previous one, likewise fails to comply with the aforesaid requirements of notice. The letter of May 23, 1989 was not duly noticed to Defendant. Finally, the communication of September 14, 1989, even though it complies with notice parameters, fails to specify place, date and time of meeting, nor does it offer alternatives. Nevertheless, Defendant, upon receiving such notices, was aware of its legal obligation to sit down to bargain with the Union, had it so desired.

The law recognizes collective bargaining as the proper instrument to promote the Government of Puerto Rico's public policy as

regards relations between employer and employees and the negotiation of collective bargaining agreements. It has expressed on innumerable occasions that an employer does not have to go to the Union to require it to negotiate a collective bargaining agreement, nevertheless, if upon being required by the Union for those ends it refuses to do so, according to the Act, it would be committing an unlawful labor practice.

The cardinal concept in collective bargaining is that of bargaining in good faith. Isabel T. Vda. de Saurí, 2 DJRT 632. The Act only imposes the duty to bargain, in addition it requires that it be done in good faith. The good faith concept is an elusive term which only acquires content and meaningfulness from the particular facts of each case. All that is needed is an open mind in a sincere desire to arrive at an agreement.

We must then go back to the moment at which the parties in this controversy were negotiating an agreement of recognition. From the instant the Teachers Federation and the complainant labor Organization agreed to subscribe and sign said agreement, the bargaining began. Nevertheless, the facts speak eloquently: Defendant, to get out of the problem momentarily agreed to recognize the Union; Complainant, in order to achieve the employer's recognition, conditioned the organizers' right to bargain to certain future circumstances which would be established in a joint effort.

In the undersigned's very personal opinion, between the parties there was not "an open mind in a sincere desire to arrive at an agreement["]; put another way, there was no good faith either on the part of the union or of the employer. It is relevant to point out as well

that even in the meetings which were held on March 20 and 31, 1989, the element of good faith was not present, either. Let us see why. The Union alleges that on March 20th, it handed to Mr. Renán Soto a document which contained "the conditions so that the Puerto Rican Federation of Workers will not exercise its right to bargain collectively in representation of them." The aforesaid document enumerates four (4) conditions for Complainant to waive the organizers' right to bargain. Nevertheless, in number 5 "Other Matters", Complainant demands of the employer the discount of quotas in its favor, of the organizers' wages, full payment of the medical plan by the employer, better wages, bonuses, liquidation of the excess of 90 days of sick leave, etc. It seems to us that Complainant is contradicting itself. First it presented certain conditions, which if accepted by the Teachers Federation would have the effect

of not bargaining. One line later, in Clause No. 5, it makes innumerable demands on the employer, characteristic of collective bargaining.

As for the meeting held between the parties on March 31, 1989, it seems to us that what happened there demonstrates ever further the absence of good faith from both parties, a total absence of an open mind in a sincere desire to arrive at an agreement. Let us it examine it carefully: before March 31st, the Union acted ahead of time in drafting a letter in which it reports its intention to commence the bargaining. When the day arrives for the meeting (March 31st), it takes it, prepared just in case they are informed that the employer was not willing to bargain; they would then hand over the letter, as in point of fact happened.[23] For its part, the President of the Puerto Rico

---

[23] T.O. p. 56

Teachers Federation informed the Union that the Board of the Puerto Rico Teachers Federation had disallowed it from carrying out the collective bargaining with respect to the Organizers.[24] In other words, the actions taken by both parties in the aforesaid meeting, clearly demonstrate their mutual intention to nullify the Agreement which they subscribed and signed on March 8, 1989 before this Organism.

The good faith requirement is satisfied when the employer listens to the Union's proposals, gives them careful attention, replies to its arguments, presents its position, explains the reasons which justify it, and shows a desire to compose the differences which arise. Federico Barela, supra, at p. 298. We conclude that the Puerto Rico Teachers Federation did not satisfy the good faith requirement, inasmuch as from the start of the meeting of March 31st, its

---

[24] T.O. p[p]. 56, 59 and 60

intention was clear in the sense of nullifying the Stipulation of March 8, 1989. The Union had the same intention, which was clearly demonstrated with the testimony given in the Public Hearing by Mr. Ramón L. Fuentes.

The Labor Relations Act provides that it shall be an unlawful labor practice for an employer to refuse to bargain collectively with the representative of the majority of its employees in a suitable collective bargaining unit. There is no doubt whatever that the fundamental conditions demanded by the Act and case law for a refusal to bargain to occur have been fulfilled in this case.

As it is known, the Act does not require employer[s] in Puerto Rico to arrive at an agreement with their employees, based on the terms that the latter propose, but it is the duty [of] every employer to bargain in good faith over all t[he] legitimate proposals of the

union, in hopes [of] arriving at an agreement. Nevertheless, the facts explained lead [us] to conclude that both the employer and the uni[on] failed to fulfill their legal obligation to bargain in good faith. Collective bargaining refers to the processes o[f] interaction between an employer and the representative of its employees concerning wages and other conditions relating to employment.[25] In the case before us this interaction between the Teachers Federation and the complainant labor organization does not obtain; on the contrary, a marked antagonism arises with transparent clarity which has utterly prevented the flow of collective bargaining for the good of the workers concerned.

In view of the facts and the aforesaid principles, and the attitude assumed by both

---

[25] See: Labor Law Course. Commerce Clearing House, Inc. (1965), p. 1674-1675.

Defendant and Complainant, and absent clear and previously established rules to guide the conduct of the parties at this time, it is reasonable to conclude that both the Teachers Federation and the Federation of Workers are liable in solidum for the unlawful practice imputed herein. Consequently it is recommended to the Honorable Board to deny the complaint filed in the above-captioned case. This, clearly, does not mean that Defendant should be exonerated from its duty to bargain with the Complainant union, in the interests of the Organizers, for which reason we also recommend this Illustrious Body to give the parties guidance about the desirability of carrying out the collective bargaining free of quarrels and antagonism, in which there predominates a climate of peace, solidarity and a sincere desire to arrive at satisfactory agreements. We cannot lose sight of the fact that favoring

collective bargaining and its mechanisms for resolving internally the problems between employees and employer is the public policy in both the United States and in Puerto Rico and other countries. Nazario vs. Tribunal Superior, 98 DPR 846 (1970).

Just as it is provided in Article II, Section 10 of Regulation No. 2 of the Puerto Rico Labor Relations Board, within five (5) days from the date of the transferral of the case to the Board, in accordance with Section 9 of the aforesaid Article, either party in the case or Counsel for the Board may file a written explanation in quintuplicate, presenting exceptions to this Report or to any part of the proceeding including decisions on all the motions or objections before the Board, together with the original and four copies of a brief supporting same. Immediately after filing the Explanation of Exceptions and the brief, the

party or Counsel for the Board who filed it, shall give notice with copies to each of the other parties in the proceedings, which shall be entitled to answer them, within ten (10) days after the date of the notice. Just as provided further on in the cited Article II, Section 10, if any party in the proceeding wishes to obtain permission to present oral argument on its exceptions and objections before the Board, it must request it from same in writing within five (5) days from the date on which it receives a copy of this Report.

Respectfully submitted.

In San Juan, Puerto Rico, this 13th day of June, 1990.

*[Signature]*

Agnes Maisonet de Marcano

Administrative Judge

*[A circular ink stamp reads:* PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL*]*

**NOTICE**

WE CERTIFY: That we have sent a copy of the instant Report of the Examining Official, by certified mail to:

1.- Angel Raúl Pérez-Muñiz, Esq.
Pérez Muñiz & Santiago Meléndez Law Offices 204 Domenech Ave.
Hato Rey, Puerto Rico 00918

2.- P.R. Teachers Federation
1572 Ponce de León
Caribe Housing Development
Río Piedras, Puerto Rico 00927

3.- Puerto Rican Federation of Workers
516 Dresde Street
Puerto Nuevo, Puerto Rico 00920

4.- Leticia Rodríguez García
Attorney-Legal Division
Board (hand-delivered)

In San Juan, Puerto Rico, this 15th day of June, 1990.

*[Signature]*

Ada Rosario Rivera

Secretary of the Board

*[A circular ink stamp reads:* PUERTO RICO LABOR RELATIONS BOARD / OFFICIAL SEAL*]*

- CERTIFIED -

o be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT XIX

EXHIBIT XI MINUTES

NO. 049

MINUTES OF THE

Ordinary Meeting of the Executive Committee of the Puerto Rico Teachers Federation held on January 29, 1989 in the organization's meeting hall in Río Piedras at 1:30 p.m.

Members present:

| | |
|---|---|
| Renán Soto Soto - President | Haydeé Reyes |
| Irma Rodríguez Morales | Anselmo Román |
| Luz E. Sánchez - Secretary | Víctor Santo |
| Domi[?] | |
| Leopoldo Hernández | William Ortiz |

Members Absent:

Sonia Cortés

Rafael Meléndez - excused

María Torres - excused

Agenda:

1. Labor Report made by the Board of Directors

2. Budget

3. Bargaining F.M.P.R. employees

4. Report Health Plan

5. Letter Antonio Arriaga

6. Softball Tournament

Renán Soto chairs the meeting and suggests that the order of point be altered to discuss the Board's report, budget and the softball tournament. The suggestion is adopted by the chair.

Fellow member Haydeé [asks] to be excused at 3:00 p.m. It is acce[pted].

Lucy states that co-members Rafael Meléndez and María Torres excused themselves from this meeting. In addition she is grateful for the calls and flowers which she was sent when she was sick.

Work schedule:

William suggests that we work until 4:00 p.m.

Leopoldo suggests until 6:00p.,.

Victor proposes it be until 5:00 p.m.

The vote is taken in series. The results were:

4:00 p. m. - 2 votes

5:00 p.m. - 2 votes

6:00 p.m. - 0 votes

There being a tie there is a re-vote.

4:00 p. m. - 2 votes

5:00 p.m. - 3 votes

We shall work until 5:00 p.m.

The chairman grants 10 min. for the report to be read.

Fellow member Irma states that the practice of handing in the reports on the same day as the discussion makes an analysis thereof difficult. She asks if from now on they can be handed in more days in advance.



Renán answers that the budget had already circulated. In addition he points out that what the report contains is gathered from what was already set forth in the evaluation reports

which were already discussed.

LABOR REPORT MADE

Víctor states that in the report some lines be include concerning the secretariat of education and curriculum to indicate:

1. there were personal problems which prevented a more effective job in that area.
2. no evaluative report was given
3. there were certain activities which were conducted by other persons. This was accepted by the consensus of all.

Haydeé states that on p. 10 of the propaganda report it be included that she served as a moderator in the Forum of gubernatorial candidates which took place at the Delegate Assembly.

Lucy states that on p. 8 Regional Representatives section it should say that she directed in stead of collaborated on the Hostos Commission.

Irma states that the actions taken in relation to the P.R.T.F. car and the employees' health

plan should be included.

Motion by Víctor to approve the report with the changes made. Motion passes unanimously.

BUDGET

Leopoldo reports the changes the budget has undergone. These were

elimination of the economic activity

accounts payable were itemized in different entries

Motion by Manuel to approve the budget. Motion passes with Irma abstaining.

BARGAINING WITH THE EMPLOYEES

Renán reports that the agreement with the employees is bargained every two years and that the economic part is made every year.

In August bargaining was initiated. Leopoldo Hernández and Nereida Martes were designated for this bargaining.

At this time there are differences on the economic aspect. We asked the fellow members to have a document discussed which contemplates the restructuring and duties of the position thus enabling the designation of a wage scale.

Renán Also *[sic]* tells us that the union requested a $100 raise. We propose in turn instead of the raise to give a $300 bonus to give us time to prepare the aforesaid document. He feels the union is willing to accept that proposal.

After certain questions were cleared up Victor presents motion to ratify Committee bargainer named by the president. Motion passes unopposed.

**182**

Motion by Víctor to give approval in principle to the general alignments for the bargaining of the economic aspect with the employees presented by Renán. Motion passes unopposed.

HEALTH PLAN REPORT

Renán reads his report where among other things he indicates that no reduction is foreseen. The problem now is with the delayed payments to providers. To questions by Víctor he says that this year the goal of 10,000 members was reached.

In addition to this report the attachment about

MAPLASA is discussed. Víctor moves to approve the report. Motion passes with Irma abstaining.

SOFTBALL TOURNAMENT

Leopoldo brings the following recommendations from the Sports commission.

1. that the tournament be divided into two sections and a semi-final series be established

2. the national center shall be in San Sebastian

3. on March 4 the regional tournaments will kick off

4. March 18 would be the semi-final

5. April 1 would be the National Tournament

6. possible centers for the regionals:

   a. Las Piedras - Humacao region

   b. Hatillo - Arecibo region

The recommendations are adopted unopposed

William moves to adjourn at 5:50 p.m.

/s/*Luz E. Sánchez González*

Renán Soto Soto, President

Luz E. Sánchez González, Secretary

- CERTIFIED -
correct translation prepared by
Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

EXHIBIT XX

[*logo: PRTF*] **Puerto Rico Teachers Federation**

*[address, etc.]*

AGREEMENTS ASSEMBLY April 17, 1989

1. Motion by Leopoldo Hernández: for this great Assembly to adopt the organizational policy of the elected organizer.

Votes:

| | |
|---|---|
| blank | 2 |
| invalid | 1 |
| opposed | 129 |
| in favor | 162 |

2. Motion by Miguel Báez: to approve the first 5 points of the document of agreements subscribed by Miguel, Antonio, Víctor, Renán and Juan. Point #6 be discussed at a second session of the Assembly.

Vote: unanimous

AGREEMENTS OF THE ASSEMBLY March 4, 1990

1. Motion by Miguel Báez: that a commission be named to study the present situation of the organizers and to make a report to this assembly. Motion passes.

2. Motion by Irma Rodríguez: to name the commission. Motion adopted.

3. The commission is comprised of the following co-workers:

| | |
|---|---|
| Luis R. Santos | Saturnino Rivera |
| Pedro O. Cruz | Vilma Rios |
| Otilio Rosado | Miguel Báez |
| Juan Camacho | Liana Irizarry |

I certify this to be correct in accordance with the minutes:

/s/ *Lucy Sánchez González*

Secretary, Executive Committee

[*along bottom of page:*] **Together We Struggle!**

- CERTIFIED -

to be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

**169** — EXHIBIT XXI

MINUTES NO. 044

Extraordinary Meeting of the Executive Committee of the Puerto Rico Teachers Federation. Nov. 23, 1989

Time : 6:30 p.m.

Place : Office of the President, Río Piedras

Members Present:

1. Renán Soto
2. Leopoldo Hernández
3. Manuel Boígues
4. Sonia Cortés
5. Víctor Santo Domingo
6. Rafael Meléndez
7. María Torres
8. William Ortiz
9. Lucy Sánchez

Members Absent:

1. Haydeé Reyes - excused
2. Anselmo Román

Agenda :

1. 1988 -89 Budget

Fellow member Renán Soto chairs this meeting where fellow worker Haydeé excused herself in

writing

Renán explains in relation to the process of discussion of the organizational policy as approved by the delegate assembly. He tells us that he feels we should extend until January 9, 1989 in order for proposals to be submitted. In addition he indicates that the organization will be in charge of reproducing and sending same to the delegates. There was a consensus that this should be so.

1988-89 Budget

Leopoldo reads the budget submitted to the Executive Committee. After he answers the Committee members questions the following is approved:

1. elimination of the economic activity on motion by Víctor Santo Domingo to which there was no objection.
2. to make a document explaining the budget by motion of Víctor Santo Domingo

The following suggestions are made:

1. Víctor suggests that it be typed.

2. Manuel tells us that what is going to be used to amortize the debt of the locals be put in a savings account in the cooperative and on June 30 be divided among the locals.

3. Renán and Leopoldo will meet to make the necessary changes and then bring the final budget to this body with its explanatory document.

Motion by Víctor to approve the budget with the modifications made. Motion unopposed.

The meeting is adjourned at 9:10 p.m.

Renán Soto Soto
President

Luz E. Sánchez
Assistant Secretary

- CERTIFIED -
to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**

243

MINUTES NUMBER: _____

PUERTO RICO TEACHERS FEDERATION

MINUTES

December 19, 1989

ORDINARY MEETING OF EXECUTIVE COMMITTEE - 2ND SESSION

Time: 10:30 A.M.

Place: Meeting Hall PRTF

| PRESENT: | ABSENT: |
|---|---|
| Renán Soto - President | Manuel Boígues - excused |
| Irma Rodríguez | Haydeé Reyes - excused |
| Lucy Sánchez | Anselmo Román - excused |
| Jesús Delgado | Rafael Meléndez - excused |
| Víctor Santo Domingo | María Torres |
| William Ortiz | |
| Juan Camacho | |
| Rubén Sanabria - late (excused) | |

Leopoldo Hernández - late (excused)

AGENDA:

1. Reading of prior minutes
2. Correspondence
3. Follow up agreements:
    a. Report Margarita Berríos
4. Old business:
    a. Report amendments DIP Regulations
    b. Anselmo and María case
    c. Report Administrative Contractual Letter
    d. Bulletin Haydeé Reyes
5. New business:
    a. Mario Pérez case - Río Piedras I
    b. Wage review Nereida Martes
    c. Gloria Torres case
    d. PFW collective bargaining
    e. Proposed activity Secretary Education & Curriculum
    f. Informative point Advisory Committee Evaluation
    g. Informative point Hostos Commission

The work begins at 10:45 with new fellow

members present.

Lucy Sánchez makes motion to work until 4:00 P.M.

Motion unopposed.

I. Reading of prior minutes:

Motion by Víctor Santo Domingo to approve minutes of July 28, 1988. Motion unopposed.

Motion by Jesús Delgado to approve the minutes of July 29, 1988. Motion unopposed.

Motion by Leopoldo Hernández to approve the minutes of July 30, 1988. Motion unopposed.

Motion by Jesús Delgado to approve the minutes of August 20, 1988. Motion unopposed.

Motion by Irma Rodríguez to postpone the reading of the rest of the minutes for the next ordinary meeting. Motion passes.

II. Correspondence:

1. Letter of November 5, 1989 from Rafael Meléndez, where he tenders his resignation to the Executive Committee and to the Health Plan Board.

Motion by Víctor to postpone acceptance of Rafael's resignation until they have more

information on the situation.

There is an objection by Juan Camacho. The vote is taken: 4 in favor, 3 against. Motion passes.

2. Letter from Víctor Santo Domingo of November 27, 1989 wherein he asks the President for an investigation of possible attempt to defraud the Health Plan by Iván Ramos Acosta, union organizer.

Renán proceeds to explain that Iván wanted to include Margarita Hernández Mergal as his wife on his health plan when she is actually his wife's daughter. In other words he wanted to include his stepdaughter as his wife.

The health plan is not in order with the request because it does not agree with the information of the prior year.

Following the discussion the following consensus is reached:

1. To summon Iván Ramos for a January 4, 1989 meeting with the Executive Committee to explain his version.

2. Said communication must be certified.

3. In addition, he shall be told why he is being summoned.

Juan Camacho asks his opposition to the procedure which will be used to go on record.

Irma suggests we discuss Margarita Berríos' report and thinks that in order for us to have broader criteria when the report is discussed for evaluation *[sic]*. It is accepted.

Three-minute recess to read said report.

III. Report on Margarita Berríos submitted by Irma Rodríguez (see file)

The report states that fellow-member Margarita Berríos unionized employee of the Teachers Federation has been careless in her duties since she apparently has emotional problems.

Irma Rodríguez says that fellow-member Berríos did not attend the medical appointment that was made for her. She feels she still needs help because she is not perform work of

excellence.

Víctor Santo Domingo suggests that the union be confronted through Ramón Fuentes concerning Margarita's situation. In addition, he states that the employee should be required to explain the reason why she failed to go to the medical appointment.

Irma acknowledges her laxity because she did not take that step with the employee.

It is decided to wait to have the report from Mildred Santiago from the Services Division to make a finding.

IV. Old business is postponed.

V. New business:

1. Mario Pérez case:

Lucy Sánchez states that the Board of Directors from Río Piedras I requests that the process of sanctions be begun against Mr. Mario Pérez, a teacher at the Gabriela Mistral School, who has shown a lack of respect toward the Board of Directors and to Vice-President Irma Rodríguez. Moreover, that he has legal cases against

fellow workers, Federation members, from his school. Apart from this he refuses to pay his full dues. He is presently withholding $2.00 from his payment of dues because he does not wish to cooperate with the Board of Directors.

Renán states that the Board of Directors must submit this petition in writing in or to be able to initiate the process of bringing charges. This will be heard at the meeting of January 13, 1990.

2. Nereida Martes wage review:

It is propounded that Nereida Martes is being paid her wages incorrectly. Lucy Sánchez makes a motion in the sense that since there are already debts with respect to 1983, the treasurer review that year and submit a report to the party on January 13, 1990. Motion passes unopposed.

Renán Soto states that Iván Ramos is outside and is asking for an audience now since he will be out of the country on the

date for which it was agreed to summon him.

Motion by Lucy Sánchez to alter the order of the agenda in order to hear Iván and then go back to the order. Victor Santo Domingo is opposed to this. The vote is taken: 5 in favor, 1 against. Motion passes.

Iván Ramos comes before the meeting by his own request so that he can be heard. He proceeds to examine the documents which we hold on the case.

Iván Ramos states that he removed Margarita Mergal to save the plan money. He indicates that he consulted with Janice del Valle, Health Plan employer, and she told him it couldn't be done, but that it didn't matter if he had written it because in the Plan they would make the necessary arrangements. Irma Rodríguez asks him[:] Who filled out the application where it indicates that Margarita Hernández Mergal is his wife? Ivan Ramos answered: "I

myself".

William Ortiz makes a motion to leave the finding on the Iván Ramos case for Thursday. Rubén Sanabria is opposed. The vote is taken, 4 in favor, 4 against. The president votes in favor. Motion passes.

Motion by Rubén Sanabria to adjourn (5:30 P.M.). Motion adopted.

*/s/ Renán [illegible]* */s/ Luz E. Sánchez*

RENAN SOTO — PRESIDENT

LUZ E. SANCHEZ — SECRETARY

- CERTIFIED -
to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION**



MINUTES NO. ____

PUERTO RICO TEACHERS FEDERATION

MINUTES

January 13, 1990

ORDINARY MEETING EXECUTIVE MEETING

Time: 10:40 A.M.

Place: Meeting hall

| PRESENT: | ABSENT: |
|---|---|
| Renán Soto - President | Anselmo Román |
| Irma Rodríguez | R a f a e l |
| Meléndez - excused | |
| Lucy Sánchez - late | María Torres |
| Leopoldo Hernández | |
| Manuel Boígues | |
| Haydeé Reyes | |
| Jesús Delgado | |
| Víctor Santo Domingo | |

Rubén Sanabria - late (excused)

William Ortiz

Juan Camacho - late

At 10:40 A.M. the required quorum is not reached, wherefore Manuel Boígues makes a motion to wait until 11:30 A.M. William Ortiz is opposed. The vote is taken, 4 in favor, 1 against. Motion adopted.

AGENDA:

1. Reading of prior minutes.
2. Correspondence
3. Follow-up agreements:
    a) Rafael Meléndez resignation
4. Old business:
    a) Report Amendments D.Ed. Regulations
    b) Anselmo & María case
    c) Report Contractual Letter Administration
    d) Bulletin Haydeé Reyes
    e) Mario Pérez case
    f) Wage review Nereida Martes
    g) Gloria Torres case
    h) Collective Bargaining F.P.T.

i) Proposed activity Education & Curriculum Secretariat

j) Informative point Advisory Committee Evaluation

2

5. New Business:

a) Report Evaluation & Work performed

b) Application to Health Plan

Renán opens meeting by apologizing for being late since he had family problems. Suggests that the following subjects be discussed today:

a) Correspondence

b) Follow-up agreements:

1. Rafael Meléndez case

c) Old business:

1. Anselmo & María situation

2. Mario Pérez case

3. Nereida & Gloria case

4. Collective bargaining PFW

5. Reports evaluation

Jesús asks to be excused at 12:30 P.M. Motion unopposed.

I. Correspondence:

1. Letter Association Dominican Professors

2. Letter Anselmo Román:

Haydeé suggests we discuss the regional report in order to know what the letter is referring to

Motion by Haydeé to amende the agenda to take the report of the Arecibo region with the letter. Motion unopposed.

Lucy reads Anselmo's report

Motion by Juan Camacho that Anselmo's report be rejected by the Executive Committee. Manual Boíguez is opposed. Discussed and vote taken. 4 in favor, 5 against. Motion defeated. Irma Rodriguez abstains.

Motion by Manuel Boíguez to receive the report. Motion unopposed. Renán suggests an audit be made of the Camuy local and the

official steps be taken with the creditors for a full hearing on the case. It is not done in order to accuse anyone but rather to clarify the matter because of the allegations made by Anselmo in his letter. Motion adopted.

Lucy Sánchez makes motion to approve Anselmo Román's resignation as Arecibo regional representative. Motion unopposed.

Lucy Sánchez makes motion not to approve Anselmo Román's report. Motion unopposed.

Motion by Juan Camacho to notify the locals



of the region about the resignation as soon as possible. Motion passes.

3. Letter from Elena Cruz Aponte dated January 13, 1990 where she discusses the board of directors' decision to sever the teacher Mario Pérez from the organization of Río Piedras

Local I.

Irma Rodríguez details the case where on several occasions the teacher has been disrespectful to her as a director and the measures taken in the cases which he has submitted.

Motion [by] William Ortiz to initiate the process of severance of professor Mario Pérez from the organization. Motion unopposed.

The board of directors will be notified of the decision. In addition, the teacher shall be notified that he has 30 days to appeal [the] decision.

4. Letter from Haydeé Reyes of February 13, 1989, where she discusses a situation that has occurred between herself and the organizer, Silvia Rodríguez.

Juan Camacho recommends that the president meet with the persons mentioned in the letter and bring a report with recommendations.

Lucy Sánchez makes a motion to invite the persons who are mentioned in the letter to a meeting of the body to be able to listen to

their versions of the incident. There is opposition. The vote is taken: 5 in favor, 2 against. Motion passes.

Motion by Manuel Boígues to include this point as number one at the next meeting of the Executive Committee. Motion adopted.

II. Follow-up agreements:

Rafael Meléndez situation:

Manuel Boígues reports that the fellow member has intentions of remaining in the United States and asks that his resignation be accepted.

Motion by Lucy Sánchez to accept the resignation of fellow member Rafael Meléndez as Humacao regional representative. Motion unopposed.

III. Old business:

1. Anselmo & María case:

That of Anselmo Román has already been resolved by accepting his resignation.

Motion by Manuel Boígues to the effect that the president write to María Torres expressing to her the concern of the Executive Committee

over her excessive absences and that at the next meeting if she does not answer the regulatory measures shall be applied to her. Juan Camacho amends [the motion] to the effect that in the letter she be asked to report on the work accomplished. Motion adopted. There is an objection to the motion as duly amended. The vote is taken: 8 in favor and 1 against. Motion adopted.

4

2. Wage review of Nereida Martes:

Leopoldo Hernández submits report on the wage history of fellow member Nereida Martes (see file).

Manuel boígues makes motion to approve the report with the treasurer's recommendations. Motion unopposed.

3. Act 89 case of Gloria Torres:

The situation presented by the fellow-member in a letter is analyzed and it is felt that she is entitled to four years. The total amount would be $1,200.00.

Manuel Boígues makes a motion to proceed with payment of the money owed to the fellow-member. Motion passes.

4. Collective Bargaining FTP:

Leopoldo states that he is bargaining with the union which represents the organization's clerical employees. He asks to be told the minimum and maximum he can offer in wages. He tells us that the PFW is requesting a raise of $100 per month.

Motion by Manuel Boígues for the treasurer to bring a breakdown of the wages of unionized employees and a breakdown of the budget of contingency expenses. Motion adopted.

5. Advisory Committee Evaluation:

Víctor Santo Domingo reports on this point.

One teacher per region was now chosen for meetings with the firm that will make the evaluation document. He gives us a summary of what has been done so far.

Irma Rodríguez congratulates the Hostos Commission on the act which was held

yesterday, January 13, 1990.

Meeting adjourns at 4:30 P.M.

*[Signature]* */s/ Luz E. Sánchez*

RENAN SOTO LUZ E. SANCHEZ

PRESIDENT SECRETARY

- CERTIFIED -

to be a correct translation prepared by

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION** EXHIBIT XXII

*[logo]* **Puerto Rico Teachers Federation**

**Together We Struggle!**

*[address, etc.]*

MINUTES NO: _____

PUERTO RICO TEACHERS FEDERATION

MINUTES

February 3 1990

EXTRAORDINARY MEETING EXECUTIVE COMMITTEE

Time: 10:45 A.M.

Place: PRTF Meeting Hall

| PRESENT: | ABSENT: |
|---|---|
| Renán Soto - President | Haydeé Reyes |
| Lucy Sánchez | María Torres |
| Leopoldo Hernández | William Ortiz |
| Manuel Boígues | |
| Jesús Delgado | |

Víctor Santo Domingo

Rubén Sanabria

Irma Rodríguez - late

AGENDA:

1. Collective Bargaining with the employees.
2. Continuation Organization Report
3. Discussion of Reports and Evaluations

The meeting commences at 10:15 A.M..

No one is excused.

Renán suggests that we work until 4:00 P.M. with a one-hour recess for lunch.

It is suggested, in addition, that people's reports be discussed.

Manuel Boígues makes motion to the effect that the agenda be approved. Motion adopted.

I. Collective Bargaining with the employees:

Renán tells us that a clear directive should be established concerning this matter.

Leopoldo gives report on the situation:

1. Two meetings have been held with the union to receive proposal and discuss same.

Leopoldo delivers a report on

employee wages.

Manuel Boígues asks: If Renán's Secretary is going to be taken into consideration.

Leopoldo indicates that the raise is automatically passed on to her.

Lucy Sánchez requests three-minute recess to read the document.

The recess is decreed.

Manuel Boígues asks if the employees have been offered some offering by Leopoldo.

Leopoldo answers: "No". Their proposal is for $100.

Manuel says that they have put out the word that they are going to be offered $50. Where do they get that from?

Leopoldo presents the recommendation that they be given the barometer of bargaining up to $50.

Manuel asks where the money is going to come from according to the budget.

Leopoldo indicates from the contingency expenses.

Manuel comments that: "seeing the report

on wages you can realize what a miserable wage they were receiving."

Jesús Delgado asks if it has been considered that the agreement not be annual and to define wage scales by category.

Renán clarifies that the agreement is bargained every two years and for the employees it is a triumph to bargain for the wage annually.

Juan Camacho says that the alternatives are one thing and the reality is another. His alternative is to discuss a raise now and to discuss with the union a package that would temper the rights acquired by the employees which is what has been propounded here.

Renán suggests that a minimum wage of $700 be established plus a $75 raise.

Irma Rodríguez supports Renán's proposal.

Víctor Santo Domingo says that it had been said before that the treasurer proposed $50 and nothing else. He feels that that amount is workable in the budget. He doesn't see the justification of the president's number.

He would like for it to clarified why the contradiction between the treasurer and the president. He shares that the $600 wages are very low.

Renán says when I make the proposal it's as I said previously it's sitting down with the delegate to discuss three fixed proposals:

1. $75 raise;

2. Basic wage of $700 and

3. To discuss immediately before we are in the bargaining of the agreement with relation to:

    a. re-evaluation of job openings

    b. needs of the organization.

Leopoldo states that there is no contradiction.

Víctor Santo Domingo indicates that to February the contingency expenses have not been used. Leopoldo affirms that we have not taken from that entry.

Víctor: "I wish to say, let it not be said here later that it is taken from the contingency expenses and that they have already

been spent. I don't want to be told later that we went over the budgeted expenses.

Leopoldo says that the contingency expenses were used on Hugo, but $9,000 of the 13,000 which was spent was recovered.

Motion by Manuel Boígues to the effect that the employees' raise be up to a maximum of $75 retroactive to July 1, 1989. Motion passes.

Motion by Renán Soto to the effect that the basic wage of the employees be raised to $700. Juan Camocho is opposed. The vote is taken: 4 in favor, 2 against. 2 abstentions. Motion passes.

Lunch recess.

II. Continue discussion Report of Organization:

Letter of Professor Wilfredo Cortés Rodríguez is read where he certifies that the one who has him informed of the case is Mildred Santiago and not Cheo as the latter had reported. Besides this he commented that the president called him to convince him that she had been with Cheo to work on his case and that he is willing to support that information.

Renán suggests that they discuss in the order we saw them in: Gilbert, Iván and Cheo.

Jesús has something to say of a general nature. His position is that he hasn't the slightest doubt that the fellow-members had failed in their functions. The fellow-members do not convince him with the explanations they gave him. But he feels that given the political situation at this time the wisest decision at this time would be to take a report to the Board of Directors without this implying that we are making certain recommendations. He is sure that at this time none of them should be suspended from their jobs. The discussion should be taken to the Board.

Juan shares fellow-member Jesús' proposal.

Víctor indicates that if he were to make the decision without using the political, he would remove all three. He believes that it is politically incorrect for this committee to fail to fulfill its responsibility to let the members of the organization of the work they failed to do. He wants the debate on the Board to

confront them with the directives. Alternatives given by Víctor:

1. Put them on probation.
2. A report to be made with the latest to have happened to send it to the membership of the area of those fellow-members.
3. To prepare a plan to go to discuss the work done by; the organizers in the district[s] with all the Federation members..

Leopoldo believes that according to the reports and what the fellow-members said there is evidence to suspend the fellow-members.

Irma shares the idea that the case be taken to the Board. She feels that the process has been corrupted because there are no elements of evaluation which places in a position of weakness, even though they admitted what Nereida brought in her report. She feels that Nereida cannot evaluate from a chair, that she has to get out of the office.

After following this discussion Lucy makes a motion that the Executive Committee after

hearing all three fellow-members feels that their work is deficient. Irma is opposed. The vote is taken: 8 in favor, 1 against; motion passes.

Motion by Leopoldo: The recommendations brought by Víctor be adopted.

Motion [by] Lucy: That the motion be divided into parts. Objection by Víctor. The vote is taken: 4 in favor, 1 against. Motion passes.

Motions by Leopoldo:

1. To require a monthly report of the Department of Organization on the work performed by the three fellow-members in their areas.

Motion adopted unanimously.

2. That a report be made to the Board of Directors and the Delegate Assembly of the work of these three fellow-members in their areas and the procedures followed by this Executive Committee. Motion unopposed.

3. That a report of the work realized by

these three fellow-workers be sent to the membership of their areas. Motion unopposed.

4. To prepare a plan in the Department of Organization of strict follow-up of these three areas. Motion unopposed.

5. That these three fellow-members be admonished for the deficiency of the work of their areas.

Jesús amends: That the Executive Committee recommend to the Board of Directors an admonishment or other measures it deems pertinent to organizers Iván Guzmán, Gilbert Rivera and José Gómez. Motion unopposed.

Irma recommends that the Extraordinary Board to discuss the case of the organizers be held before the month of April.

Motion by Víctor: For the report of Organization and Development and its attachments be approved. Unanimously approved.

Meeting adjourns at 5:00 P.M..

_____ /s/ Lucy

these three fellow-workers be sent to the membership of their areas. Motion unopposed.

4. To prepare a plan in the Department of Organization of strict follow-up of these three areas. Motion unopposed.

5. That these three fellow-members be admonished for the deficiency of the work of their areas.

Jesús amends: That the Executive Committee recommend to the Board of Directors an admonishment or other measures it deems pertinent to organizers Iván Guzmán, Gilbert Rivera and José Gómez. Motion unopposed.

Irma recommends that the Extraordinary Board to discuss the case of the organizers be held before the month of April.

Motion by Víctor: For the report of Organization and Development and its attachments be approved. Unanimously approved.

Meeting adjourns at 5:00 P.M..

/ *Lucy Sánchez*

RENAN SOTO, PRESIDENT LUCY SANCHEZ, SECRETARY

Certified Court Interpreter
Administrative Office of the
United States Courts

**CERTIFIED TRANSLATION** — EXHIBIT XXIII

*[Text is handwritten; the Translator notes that the text is lacking in proper Spanish accent marks to indicate verb tenses, etc.]*

Extraordinary Meeting 3 Dec/90

Time: 10:45 am

Place: Rotary Club

Present:

| | |
|---|---|
| Renan Soto | Luis Lopez - late |
| Manuel Boigues late ex. | Silvia Rodriguez |
| Luz E. Sanchez ex. | Jose Gonzalez late |
| Hayde *[sic]* Reyes late ex. | Lillian Gonzalez |
| Nelson Santiago | |
| Luz N. Arroyo | |
| Angel Bonilla | |

Agenda

1. Work Plans 90 - 93
2. Budget 90 - 91

Renan Soto chairs this meeting when it begins Manuel excuses Jose and Lillian who will arrive later.

Renan suggests that the schedule be straight through until the subjects are over. A 30-minute recess is taken to read the documents.

I Work Plans

A. Vice President

Manuel explains that he delivered a work plan which includes his educational program since the other functions and tasks are in the regulations.

Renan makes the following observations.

1. He finds no preparation of some type of curse in parental advice.

2. That *[unintelligible]* beyond seminars organizational techniques for directors are achieved

3. The reform should go beyond seminars, some type of "educational" strategy should be sought to reinforce this work.

4. The area should be professionalized, modern techniques used.

Haydeé: She feels that a plan of activities was delivered and not a work plan. This does not correspond to what they were expecting.

Lucy: She suggests that the workers from the P.R.T.F. be sent to the seminars. Renan agrees with this because it is vital for it to be had in perspective of *[unintelligible]* of the fellow-workers from the office to our work.

Manuel tells us that on other occasions they have been invited but they do not integrate.

Renan answers him that perhaps if they see each other in a work program we can achieve that integration.

Renan indicates that there must be a training program for the Executive Committee.

Haydee recommends that this work plan be reviewed and one delivered for 3 years.

Luis tells Manuel that he should go back over the documents to bring them up to date.

Haydee make a comment in relation to it becomes almost impossible to obtain important documents because they are in the Vice-president's office.

Lucy Sanchez indicates that in her work plan it

contemplates her having prepared an area where these documents are filed in order for them to be accessible to all.

B- Secretary Curriculum & Propaganda

Renán recommends that the 25th anniversary of the PRTF be dedicated to the Federated teachers and to past members of the Executive Committee. The Secretary Treasurer indicates that the 1st Conference of Education does not say it is world-wide wherefore this implies that it could be Caribbean and perhaps Central American. This is accepted.

Manuel recommends to the person in charge of the area that the focus of the propaganda should change so that it can be more unionist.

Haydee is asked concerning the Dance activity. She indicates that it would be a small one and would be by invitation. Lillian indicates that the anniversary activities should be held by regions so that everything does wind up in the metropolitan area.

Renan recommends the creation of a Special committee for the celebration of the 25th

anniversary.

C. Secretary - Treasurer

Haydee indicates that the cultural trips should be coordinated with the Cultural Commission.

Renan indicates that priority should be given to this matter since there is great enthusiasm for this type of trip.

Luis asks if it would be feasible for us to join the summer camp project of the Coop.

Lucy Sanchez answers him that as this has to do with unionism the proposal should be submitted to the Commission of Unionism and Cooperativism and not to her.

Haydee asks what status is the matter relating to the AFT.

Renan answers her that we have to have a meeting to discuss strategies for dealing with the AFT - to see the legal and political aspects of the matter. He indicates moreover that the money is not being sent to him but that the money is being set aside.

Haydee presents a motion to recess 15 min. for them to look for copies of the regional plans.

Motion passes.

A. San Juan Region.

Luzy Sanchez indicates that in the plan the activities and objectives got mixed together.

Haydee tells Silvia that for the regional publication there should be some coordination with her office but the publication would not be assigned to its expense item.

Fellow-member Silvia is told to write her plan in such a way that she separates the objectives form the activities.

Luis explains that the representatives from Caguas, Arecibo, Mayaguez, Humacao, and he met and made a single plan.

Lucy proposes that they can have things in common but they aren't told how they are going to achieve these things in each region if each district has its peculiarities. She recommends that each of them make a plan for each region.

Nelson explains that when they began they had no on the job experience. At the time the plan was made they didn't have the knowledge of the situations of the locals. They decided to make

a plan when *[text repeats:]* They decided to make a plan when they still didn't know how the work would be in the regions, for which reason they did it in a general fashion.

Manuel: What Nelson is saying is a reality because they would come to do certain unknown functions. They should be given an opportunity to create a work plan in unionist terms, progagandistic, service-oriented, activities of struggle and militancy, etc.

Jose wants to make the proviso that he sent a letter to the members of the boards of directors for them to send him suggestions to integrate into the work plan, but they only brought to his attention the situation of the attorneys and matters relating to opening an office in Arecibo.

Renan then indicates that the general assertions which have already be delivered be accepted so that the specific plans can be delivered later. There was no opposition to this.

Luz Arroyo makes a motion for schedule review. Luis raises a question of order because the

subject has not been exhausted.

Renan declares him to be right.

Lillian asks about the date of delivery of their regional plans. Renan answers her that it would be on December 12, 1990.

Haydee makes a motion to recess for a half-hour for lunch. Motion passes.

E. Ponce Region

Haydee recommends they restructure the objectives to be regional.

Sylvia congratulates him for having turned in a good work plan.

Lucy Sanchez makes a motion to approve the work plans discussed with the due recommendations. They are unanimously approved.

II Budget 1990 - 91

The Secretary Treasurer presents the budget for fiscal year 1990-91, explaining all the items. Standing out in the budget is the fact that it recommends: 1) a $50 increase for transportation and $40.00 for per diems for members of the Executive Committee and Functionaries; 2) to allot $300.00 in

transportation to the Administrative Coordinator; 3) to pay .75 per member to the legal plan which would leave .25 to be utilized for the Defense Fund and Solidary Assistance.
Sylvia recommends a item be made for the expenses of the regional representatives.
In addition she indicates that direct payments should be included in income.
Haydee recommends the question relating to wage policy be discussed on an Executive Committee.

Renan suggests that the questions relating to wage policy, vacation time, sick leave, overtime, absences, conditions and benefits of the functionaries be discussed in January.
Lillian suggests that ways be sought out for the locals to generate funds.
Silvia makes a motion to approve the budget with the recommendations made. Motion passes unanimously.

Motion to adjourn at 5:45 p.m. Motion passes.

Signed by Luz E. Sanchez

Secretary Treasurer

- CERTIFIED -
o be a correct translation prepared by:

Certified Court Interpreter
Administrative Office of the
United States Courts